

LEGISLATIVE HEARING ON VIN DATABASE AND AUTO WHISTLEBLOWER BILLS

HEARING BEFORE THE SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS

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LEGISLATIVE HEARING ON VIN DATABASE AND AUTO WHISTLEBLOWER BILLS

FRIDAY, SEPTEMBER 25, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND
TRADE,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:05 a.m., in room 2322, Rayburn House Office Building, Hon. Michael C. Burgess, M.D., (chairman of the subcommittee) presiding.

Present: Representatives Burgess, Lance, Guthrie, Bilirakis, Brooks, Mullin, Schakowsky, Kennedy, Butterfield, and Pallone (ex officio).

Staff Present: James Decker, Policy Coordinator, CMT; Melissa Froelich, Counsel, CMT; Kirby Howard, Legislative Clerk, Paul Nagle, Chief Counsel, CMT; Olivia, Trusty, Professional Staff, CMT; Dylan Vorbach, Staff Assistant; Michelle Ash, Minority Chief Counsel, Commerce, Manufacturing, and Trade; Jeff Carroll, Minority Staff Director; Lisa Goldman, Minority Counsel; Rick Kessler, Minority Senior Advisor and Staff Director, Energy and Environment; and Adam Lowenstein, Minority Policy Analyst.

OPENING STATEMENT OF HON. MICHAEL C. BURGESS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. BURGESS. The subcommittee on Commerce, Manufacturing, and Trade will now come to order. The chair will recognize himself for 5 minutes for the purpose of an opening statement.

And I do want to welcome everyone to our hearing this morning on the draft companion legislation to the Motor Vehicle Safety Whistleblower Act, and the discussion draft of the Improving Recall Tracking Act.

In 2014, there were over 63 million vehicles recalled in the United States due to safety concerns. This represents the highest number of vehicle recalls in more than three decades.

Under current law, vehicle manufacturers are required to report defects and noncompliance to the National Highway Traffic Safety Administration. The chairman of the full committee, Mr. Upton, has seen to it with the good work he did on the TREAD Act, but there have been times when the reporting has been slow.

The Motor Vehicle Safety Whistleblower Act is intended to foster greater attention and greater responsiveness to vehicle safety defects. It does so by providing an incentive to automotive employees and to contractors who report potential safety violations to the

United States Department of Transportation that otherwise would be concealed or unreported. The bill encourages employees to report safety problems within their companies first to allow the automaker the opportunity to address safety issues. This is an important point because it keeps the incentive to work within the system. The bill is meant to enhance current early reporting systems that have already been instituted by Congress. Furthermore, the bill is designed with the express purpose of exposing and stopping instances of wrongdoing and protecting the safe and well-being of the public.

In addition to the Motor Vehicle Safety Whistleblower Act, we have an opportunity to examine the discussion draft of the Improving Recall Tracking Act. This proposal would direct the Department of Transportation to establish a national database of vehicle identification numbers and driver registration information. It is intended to facilitate the consumer notification process in the event of a safety recall.

In light of recent recalls, it has become apparent that one of the main challenges of removing defective vehicles from the road is making certain that the right consumers are notified of the defect in a timely manner. This hearing will give us an opportunity to discuss how a national database housing current driver registration information and current vehicle identification numbers could help improve the consumer recall notification process beyond that which is in place today. We will also hear how the industry is currently responding to these challenges so we can factor in improvements of the system.

Vehicle safety is a serious issue. It continues to be a concern for this subcommittee and for the driving public. In past hearings on this subject, I have said that Americans deserve better, Americans deserve more. The legislative proposals we will consider today are a step in the right direction toward providing the driving public with confidence that the vehicles they are driving are safe and that the recall process works. I will, in anticipation, thank the witnesses for their testimonies. And I look forward to an engaging discussion on these measures.

With that, the chair yields back and recognizes the subcommittee ranking member, Ms. Schakowsky, for 5 minutes for an opening statement.

[The prepared statement of Mr. Burgess follows:]

PREPARED STATEMENT OF HON. MICHAEL C. BURGESS

Good morning. I want to welcome everyone to today's hearing on the draft companion legislation to the Motor Vehicle Safety Whistleblower Act, and the discussion draft of the Improving Recall Tracking Act.

In 2014, there were over 63 million vehicles recalled in the United States due to safety violations. This represents the highest number of vehicle recalls in more than three decades.

Under current law, vehicle manufacturers are required to report defects and non-compliance to the National Highway Traffic Safety Administration. Our Chairman has seen to it with the good work he did on the Tread Act. But there still have been times when the reporting has been too slow.

The Motor Vehicle Safety Whistleblower Act is intended to foster greater attention and responsiveness to vehicle safety defects. It does so by providing an incentive to automotive employees and contractors who report potential safety violations to the U.S. Department of Transportation that are concealed or go unreported. The bill en-

courages employees to report safety problems within their companies first to allow automakers the opportunity to address possible issues. This is an important point because it keeps the incentive to work within the system. The bill is meant to enhance current early reporting systems that have already been instituted by Congress. Furthermore, the bill is designed with the express purpose of exposing and stopping instances of wrongdoing, and protecting the safety and wellbeing of the public.

In addition to the Motor Vehicle Safety Whistleblower Act, we will have an opportunity to examine the discussion draft of the Improving Recall Tracking Act. This proposal would direct the Department of Transportation to establish a national database of vehicle identification numbers and driver registration information. It is intended to facilitate the consumer notification process in the event of a vehicle safety recall.

In light of recent recalls, it has become apparent that one of the main challenges of removing defective vehicles from the road is making sure that the right consumers are notified of the defect in a timely manner. This hearing will give us an opportunity to discuss how a national database housing current driver registration information and vehicle identification numbers could help improve the consumer recall notification process beyond the processes that are in place today. We will also hear how the industry is currently responding to these challenges so we can figure out how to improve the system.

Vehicle safety is a very serious issue that continues to be a concern for this subcommittee and the driving public. In past hearings on this subject, I have said that Americans deserve more. The legislative proposals we will consider today are a step in the right direction towards providing the driving public with confidence that the vehicles they are driving are safe and the recall process works. I thank the witnesses for their testimonies and I look forward to an engaging discussion on these measures.

OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. It is so nice to meet on a quiet day where there is no real news to be talking about except for this. But even in connection with this, I did want to mention that I think this committee can also be focusing on very big issues and big news. And I look forward, I hope, to focusing on Volkswagen and their fraudulent emissions testing, cheating, that was revealed earlier this month.

As you pointed out, that the law already does require auto manufacturers to report defects. And here we have a situation of deliberately building in a defect. And we need to talk about that. I have a piece of legislation, the Vehicle Safety Improvement Act, which I think would actually do the real deal in terms of making sure that we deal with auto safety.

I want to recognize and welcome a friend of mine, Will Wallace, and a friend of this committee, who is testifying today on behalf of Consumers Union. He is an outstanding former staffer of the subcommittee and I know will bring important insight to this issue.

With more than 95 million American vehicles subject to safety recall over the past 2 years, we obviously have to improve the oversight of the auto industry and the efficacy and timeliness of recalls. I believe, unfortunately, that these bills miss the mark. While I support efforts to enhance the communication between auto companies and drivers whose cars are subject to recall, I don't believe that the vehicle identification number, VIN Database, discussion draft would achieve this goal.

Manufacturers are already able to access the names and addresses of drivers whose vehicles are subject to a recall. The difference

in the discussion draft is that those records would be free of charge to the auto companies. And, yet, the bill would impose significant costs on NHTSA and the States with no funding provided to implement the new database. The Illinois Secretary of State's Office has communicated to us that he has serious concerns about the lack of financial support.

The second bill is intended to encourage auto industry whistleblowers. And while I appreciate the inclusion of language allowing whistleblowers to receive compensation and anonymity for coming forward, I have concerns about the bill's stipulations. Mr. Chairman, you said that it is good that the whistleblower has to report their concerns directly to the company first internally. And while one could make an argument that this might speed things up, I also really worry that provisions would discourage whistleblowers from acting and put them at professional risk for doing so, which really has been the history of whistleblowers. They have not done well vis-a-vis the companies that they work for.

There is a broader and more impactful legislative alternative to improve auto safety, as I said. My Vehicle Safety Improvement Act, which is cosponsored by Ranking Member Pallone and nine other members of this committee, is the alternative. It increases the amount and accessibility of information auto manufacturers must share with NHTSA and the public, and the public, about vehicle safety issues, and provides new authority to expedite auto recalls if they pose an imminent hazard of serious injury or death.

So that is what I am hoping that we are going to be able to do rather than I believe these bills, which kind of nibble around the margins. I am not just disappointed, I am actually frustrated. And I again urge the subcommittee to take up the Vehicle Safety Improvement Act. And I look forward to a discussion about what Volkswagen has been doing. And I yield back.

Mr. BURGESS. The chair thanks the gentlelady. The gentlelady yields back.

Does anyone on the Republican side seek time for an opening statement? Seeing none. Any further members on the Democratic side that seek time for an opening statement? Seeing none.

Again, we want to thank our witnesses for being here today and for being willing to take time to give testimony before the subcommittee. Our witness panel for today's hearing includes: Mr. John Bozzella, the President and CEO for the Alliance of Global Automakers; Mr. Joe LaFeir, Senior Vice President at IHS Automotive; Mr. Cleveland Lawrence, III, the Co-Director of Taxpayers Against Fraud; Mr. William Wallace, the Policy Analyst at the Consumers Union; Mr. Shane Karr, Vice President for Federal Affairs at the Alliance of Automotive Manufacturers.

We do appreciate all of you being here today. We will begin the panel with Mr. Bozzella. He will be recognized for 5 minutes to summarize his testimony. Mr. Bozzella, you are recognized for 5 minutes. Thank you.

STATEMENTS OF JOHN BOZZELLA, PRESIDENT AND CEO, ASSOCIATION OF GLOBAL AUTOMAKERS; JOE LAFEIR, SENIOR VICE PRESIDENT, AUTOMOTIVE IS&S, INC.; CLEVELAND LAWRENCE III, CO-DIRECTOR, TAXPAYERS AGAINST FRAUD; WILLIAM WALLACE, POLICY ANALYST, CONSUMERS UNION; AND SHANE KARR, VICE PRESIDENT, FEDERAL AFFAIRS, ALLIANCE OF AUTOMOBILE MANUFACTURERS

STATEMENT OF JOHN BOZZELLA

Mr. BOZZELLA. Thank you, Mr. Chairman, Ranking Member Schakowsky, members of the subcommittee, thank you very much for the opportunity to testify today.

I am John Bozzella, CEO and President of the Association of Global Automakers. As the ranking member has mentioned, the very troubling facts that have come to light involving Volkswagen will likely have significant implications for the industry. And I look forward to working with the subcommittee and discussing these issues as we move on.

I have been asked for our perspective on two bills, the Motor Vehicle Safety Whistleblower Act and the Improving Recall Tracking Act. In 2012, Congress included strong whistleblower provisions in MAP-21. We agree that whistleblower protection is a valuable tool for ensuring that safety concerns will be promptly identified, investigated, and remedied. The bill before the subcommittee builds on this law. Whistleblower protections have been incorporated into the safety practices of our members because they recognize that the manufacturer and its employees are the first line of defense in identifying and remedying safety concerns. Our member companies have instituted internal controls that empower employees to communicate with their employer about any problem they observe that could impair product quality or safety. For example, manufacturers train their employees specifically on product defect and safety issues and have dedicated safety officers who are responsible for following up on concerns raised by employees.

In addition, manufacturers have established hotlines that empower employees to communicate potential problems. Such systems allow the company to take appropriate remedial steps, in many cases before the affected vehicles leave the factory. But no system is foolproof. We recognize that whistleblower statutes can play an important role in improving motor vehicle safety.

The implementing regulations should give companies every reason and incentive to be informed of the problems promptly so that they can investigate the issues and make any repairs that are needed. While it is important for whistleblowers to be able to report safety issues directly to NHTSA, the process should ensure that employees are not incentivized to shortcut or circumvent internal systems that would result in quicker problem resolution. Our shared goal is to address defects, find remedies, and take care of the customer as quickly as possible. This is why the manufacturer needs to be a critical part of the process from the beginning.

The second bill before the subcommittee would establish a national VIN database using registration data collected by State DMV offices. We agree DMVs could help improve recall completion rates. This bill would allow manufacturers access to the most up

to date information from the DMVs, which they could use to more effectively communicate recall notices to vehicle owners. In addition, DMVs could be encouraged to notify everyone who registers a motor vehicle about the recall status of their vehicle.

This bill also directs NHTSA to enable batch searching and processing of VINs on its SaferCar.gov Web site. We are aware that the current NHTSA system has limitations. But it is our understanding that some vendors have developed tools that enable batch processing. We believe the subcommittee should ensure that the processes created by this bill are not unnecessarily duplicative.

Increasing recall completion rates is a priority for Global Automakers. That is why we are conducting research along with the Auto Alliance to help understand what drives consumers to respond to recall campaigns. We look forward to briefing the subcommittee on the research findings soon.

Thank you again for the opportunity to appear before you today. And I would be happy to answer any questions that you might have.

Mr. BURGESS. The gentleman yields back. The chair thanks the gentleman.

[The prepared statement of Mr. Bozella follows:]



Aston Martin • Ferrari • Honda • Hyundai • Isuzu • Kia
Maserati • McLaren • Nissan • Subaru • Suzuki • Toyota

Testimony of
John Bozzella
President and CEO
Association of Global Automakers, Inc.

Before the
Subcommittee on Commerce, Manufacturing and Trade
House Committee on Energy and Commerce

September 25, 2015

Mr. Chairman, ranking member Schakowsky, members of the Subcommittee, thank you very much for the opportunity to testify today. I am John Bozzella, President and CEO of the Association of Global Automakers. Global Automakers represents international automobile manufacturers that design, build, and sell cars and light trucks in the United States. Last year, our members sold 43 percent of the new vehicles purchased in the United States and produced 40 percent of all vehicles built here.

The safety of Americans traveling on our roadways is a priority for all of our members. Our members support and encourage efforts to identify potential safety issues as early as possible, so they can be promptly investigated and, if necessary, repaired. As I testified here in June, Global Automakers supports efforts to dramatically improve recall completion rates, so that no one is left driving an unrepaired vehicle.

I have been asked for our perspective on two bills, the Motor Vehicle Safety Whistleblower Act and the Improving Recall Tracking Act.

In 2012, Congress included strong whistleblower provisions in MAP-21. We agree that whistleblower protection is a valuable tool for ensuring that safety concerns

will be promptly identified, investigated and remedied. The bill before the Subcommittee builds on this law.

Whistleblower protections have been incorporated into the safety practices of our members because they recognize that the manufacturer and its employees are the first line of defense in identifying and remedying safety concerns. Our member companies have instituted internal controls that empower employees to communicate with their employer about any problem they observe that could impair product quality or safety.

For example, many manufacturers train their employees specifically on product defect and safety issues and have dedicated safety officers who are responsible for following up on concerns raised by employees. In addition, manufacturers have established internal “hot lines” that empower employees to communicate potential problems. Such systems allow the company to take appropriate remedial steps, in many cases before the affected vehicles leave the factory.

But no system is foolproof. We recognize that whistleblower statutes can play an important role in improving motor vehicle safety. Thus, the regulations should give companies every reason and incentive to be informed of problems promptly,

so that they can investigate the issues and make any repairs that are needed. While it is important for whistleblowers to be able to report safety issues directly to the National Highway Traffic Safety Administration (NHTSA), the process should ensure that employees are not incentivized to shortcut or circumvent internal systems that would result in quicker problem resolution.

Our shared goal is to address defects, find remedies, and take care of the consumer as quickly as possible. To achieve this goal, implementing regulations should consider the following points:

First, whistleblowers should be required to report to the manufacturer, prior to filing a complaint with NHTSA, in order to qualify for a financial award. Additionally, regulations should outline a procedure by which NHTSA would promptly notify the manufacturer when the agency receives a complaint.

Second, NHTSA should establish procedures to ensure that a complaint is accurate and reliable. The system should not prejudge the validity of claims. Procedures should encourage quick resolution of meritorious complaints and protect NHTSA from wasting resources chasing inaccurate allegations.

The second bill before the Subcommittee would establish a national vehicle identification number (VIN) database using registration data collected by state Department of Motor Vehicle (DMV) offices. We support efforts to increase recall completion rates. To that effect, we are conducting research to help us understand what drives consumers to respond to recall notices. We look forward to briefing the Subcommittee on the research findings.

We believe DMVs could help improve recall completion rates. This bill would allow manufacturers access to the most up-to-date information from the DMVs, which they could use to more effectively communicate recall notices to vehicle owners. In addition, DMVs could be encouraged to notify everyone who registers a motor vehicle about the recall status of that vehicle.

This bill also directs NHTSA to enable batch searching and processing of VINs on its [safercar.gov](https://www.safercar.gov) website. We are aware that the current NHTSA system has limitations, but it is our understanding that some vendors have developed their own tools that enable batch processing for a fee. We believe the Subcommittee should ensure the processes created by the bill are not unnecessarily duplicative.

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Thank you again for the opportunity to appear before you today, and I would be happy to answer any questions you may have.

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Mr. BURGESS. Mr. LaFeir, you are recognized for 5 minutes to summarize your testimony please.

STATEMENT OF JOE LAFEIR

Mr. LAFEIR. Chairman Burgess, Ranking Member Schakowsky, thank you for allowing me to testify, and members of the subcommittee.

I am Joe LaFeir, Senior Vice President, Information Systems and Solutions for IHS, where I lead the company's automotive data solutions business, which includes recall processing. IHS's foundation in the automotive industry reaches back to the advent of the automobile. Since then, IHS has worked with nearly all manufacturers to facilitate the recall process.

IHS remains an industry leader in vehicle recall data processing and provides this service to most manufacturers today. The draft Improving Recall Tracking Act proposes to establish a national VIN database and driver information to aid in recall notification. In addition, the bill requires batch searching of the current SaferCar.gov.

To be clear, we do not oppose the batch searching provision. We are here today to express our opposition to the proposed new database. As with any good idea, the private sector has already developed a highly effective and robust solution. So the legislation simply directs the Federal Government to attempt to replicate what already exists. If enacted, the legislation will limit innovation and use taxpayer funds to create a Federally-run database that would be less efficient and likely less capable than current market solutions.

Today, the private sector's real time data processing is accomplished utilizing best in class system technologies. Using processes developed over decades, companies like IHS process billions of records each year from tens of thousands of sources and thousands of file formats. Companies like IHS also employ thousands of people, many of whom are devoted to data processing to support recall.

IHS acquires, standardizes, assembles data to create mailing lists to provide notice to affected consumers. We assist with the fulfillment of recall notices, measurement of campaigns through their completion. We provide real time reporting to our OEM customers. Further, following completion of recall notice mailings, we gather open recall information and provide that to the public through our subsidiary CARFAX and its vehicle history report service.

This bill would require registration information to be gathered from each state. Automotive data companies use registration as just one data point and many proprietary sources to determine the best possible address to contact the owner of a recalled vehicle. As proposed, this database would not provide the same level of data that we can provide today in the private sector. Using private sector data solutions, we can identify and provide addresses for the vast majority of car owners. While there are a few exceptions, recall notification return mail rates typically range in the single digits. And the private sector continues to innovate further to reduce these numbers. Given the private sector's success in providing notice, perhaps the focus should be placed on addressing why some notified consumers get their cars remedied and others do not.

In conclusion, the legislation, while well-intended, does not create a better solution than what exists today. In an era where Federal budgets are limited, this bill would direct NHTSA to attempt to duplicate a product and service that the market, using private capital, has created decades ago. The private sector continues to innovate, going well beyond the requirements of this legislation.

I appreciate the invitation to testify, and look forward to your comments.

Mr. BURGESS. The gentleman yields back. The chair thanks the gentleman.

[The prepared statement of Mr. LaFeir follows:]

Testimony of Mr. Joe LaFeir, Senior Vice President, IHS Automotive

**House Energy & Commerce Subcommittee on Commerce, Manufacturing & Trade
Legislative Hearing on VIN Database and Auto Whistleblower Bills**

Sept. 25, 2015

Chairman Burgess, Ranking Member Schakowsky, and members of the Subcommittee, I appreciate the opportunity to testify before you on the staff draft entitled the “Improving Recall Tracking Act.” I appear before you in my capacity as Senior Vice President of Information Systems and Solutions for IHS where I lead the company’s automotive data solutions business, which includes recall processing.

IHS’ foundation in the auto industry reaches back to the advent of automobiles when, in 1921, Ralph Lane Polk worked with Alfred P. Sloan, General Motor’s CEO, to publish statistical information on cars and trucks. Since then, R. L. Polk & Co., which was acquired by IHS in 2013, has worked with nearly all manufacturers to facilitate the recall process. IHS remains the industry leader in vehicle recall data processing for most manufacturers of passenger vehicles, motorcycles, RV components and heavy trucks.

The draft “Improving Recall Tracking Act” proposes to establish a national database of VIN and driver registration information to facilitate efforts by automakers to notify affected consumers of motor vehicle defects and safety recalls. As with many good ideas, the private sector has already developed a highly effective and robust solution, and so the legislation simply directs the Federal Government to attempt to replicate what already exists. If enacted, the legislation would limit innovation and use taxpayer funds to create a federally run database that would be less efficient and likely less capable than current market solutions.

Today, the private sector’s real-time data processing is accomplished utilizing best-in-class system technologies. Using well-advanced processes developed over decades of innovation, companies like IHS can process billions of vehicle transactions each year from tens of thousands of sources and thousands of file formats.

Companies like IHS also employ thousands of people, many of whom solely process vehicle data or create the systems required to do so. IHS acquires, standardizes, enhances and assembles the data to create the mailing list to identify the last known or current owner who will receive the recall notice. We assist with fulfillment of the recall notice and the measurement of the campaign through its completion, providing real-time reporting of the status of recall campaigns to our OEM customers. Further, following the completion of the recall notice mailing we gather open recall information that we provide to the public through our subsidiary CARFAX and its vehicle history report service. CARFAX provides VIN-level vehicle history reports to consumers, dealers and thousands of other public and private entities, leveraging over 92,000 data sources to develop a vehicle history database with over 15 billion records. Working with the vehicle manufacturers, CARFAX broadcasts open recalls to millions of used car buyers and sellers every day. CARFAX provides free recall checks (www.carfax.com/checkrecalls.cfx) and alerts (www.carfax.com/recall.com) to consumers and works with dealers, auctions and other entities for batch processing of VINs to search for open recalls.

This bill would require registration information to be gathered from each state and updated within 7 days of a subsequent registration. We acquire data from all US jurisdictions and their systems capabilities vary greatly. At present, a weekly update of registration data from all states would not be possible. In addition, three percent of the state registration files we receive trip our quality validation check which prevents it from being loaded into our database. Companies like IHS use registration data as just one data point amongst its many other proprietary sources to determine the best possible address for the last known or current owner of a recalled vehicle. As proposed, this database would not provide the same level of near real time data that we can provide in the private sector today.

In addition, the draft bill contemplates inclusion of e-mail addresses for purposes of recall notification. Given that an e-mail address is not required to register a vehicle, the coverage of e-mail addresses from registration data will be very low, if captured at all. IHS currently utilizes proprietary data sources to provide e-mail addresses or phone numbers to provide a call to an owner to supplement a recall notice.

Our experience suggests that, using private sector data solutions during recall campaigns, we are now able to identify and provide addresses for the vast majority of car owners. While there may be exceptions, the recall notification return mail rates are typically in the single digits. We are also able to identify cars that no longer are on the road or cars that have been exported to other countries which reduces the population of vehicles requiring recall notice. Again, this is another instance where the private sector is efficiently providing services that exceed the bill's requirements.

In a few years, with the advent of the "connected car" and telematics, the majority of vehicles in operation will be able to relay open recalls directly to vehicle owners, making any potential taxpayer investment into a new federal VIN recall database now particularly unnecessary. I submit that as technology progresses, a critical focus in this area should be placed on addressing why after receiving notice of a defect, some consumers get them remedied while others do not.

Chairman Burgess, Ranking Member Schakowsky, and members of the Subcommittee, the effort contemplated by the legislation, while well intended, does not create a better solution than what currently exists. In an era where federal budgets are limited, this bill would direct NHTSA to attempt to duplicate a product and service that the market, using private capital, created decades ago. The private sector continues to innovate, as we are incentivized to do, going well beyond the requirements of the legislation.

I appreciate the invitation to testify and look forward to an opportunity to assist the Subcommittee further on this matter.

Mr. BURGESS. The chair recognizes Mr. Lawrence for 5 minutes for a summary of your testimony please.

STATEMENT OF CLEVELAND LAWRENCE, III

Mr. LAWRENCE. Good morning, Mr. Chairman, Ranking Member Schakowsky, Ranking Member Pallone, and members of this subcommittee. And thank you for inviting me to testify at today's hearing on the proposed Motor Vehicle Safety Whistleblower Act. My comments will be restricted to that bill only.

My name is Cleveland Lawrence, III. I am a Co-Executive Director of Taxpayers Against Fraud and its sister organization, TAFEF Education Fund, which are two non-profit public interest organizations dedicated to combating fraud against taxpayer dollars through the promotion and protection of False Claims Act laws and qui tam provisions, which allow whistleblowers with evidence of fraud against government entities, to file suit on behalf of the government in exchange for financial rewards of at least 15 and up to 30 percent of the government's recovery if their suits are successful.

My organizations also support the goals of the IRS, SEC, and CFTC whistleblower programs, which do not have qui tam provisions but still offer monetary rewards to whistleblowers in exchange for original information about significant tax, securities, and commodities fraud.

I first joined TAF in 2008 and became co-executive director in 2013. I am an attorney by training and spent the first 6 years of my career as an associate at the international law firm of Weil, Gotshal & Manges, where, among other things, my practice included defending whistleblower claims brought under the False Claims Act. Having examined whistleblower claims from both sides over the past 15 years, I can say without reservation that the Federal False Claims Act is the model statute for any effective whistleblower law or program.

Since that law was overhauled in 1986, the False Claims Act has returned more than \$40 billion to the U.S. Treasury. This result is in large part due to the significant role that whistleblowers have played in exposing fraud on the Federal fisc. For example, according to the U.S. Department of Justice, False Claims Act cases have recovered \$5.69 billion for the Federal Government just last fiscal year alone, with nearly \$3 billion of that total resulting from lawsuits filed by whistleblowers. The success of the False Claims Act over a near 30-year period should not and has not been ignored. More than half of the States have False Claims Act statutes now. And at the government's urging, most of these laws mimic the Federal statute.

Similarly, the IRS, SEC, and CFTC now have provisions that reward whistleblowers, all of which are modeled on the False Claims Act. While I applaud and fully endorse the effort to enact whistleblower legislation to make automobiles and road travel safer, I cannot support the proposed Motor Vehicle Safety Whistleblower Act in its current form, as it suffers from many of the deficiencies that have already been corrected under the False Claims Act, IRS, SEC, and CFTC arenas. I will discuss two of the primary weakness of

the bill, either of which is enough to significantly derail the program.

First, the bill lacks guaranteed minimum rewards and gives the Secretary of Transportation unfettered discretion over the amount of an award up to a maximum to give to whistleblowers whose information resulted in monetary sanctions recovered by the government from an automobile manufacturer, parts supplier, or dealership, including the option to award no award at all. Decades of experience make clear that any whistleblower program will inevitably fail unless it guarantees minimum rewards for those who risk their careers to come forward.

Before the False Claims Act was overhauled in 1986, it did not guarantee minimum rewards either. And the program did not effectively remedy fraud, bringing in only about \$54 million dollars in the year before it was amended. But since then, we have seen the outstanding success of the statute, bringing in billions of dollars each year in the recent years. Whistleblowers are simply unable to risk their livelihood without the assurance of some compensation for doing so and reporting fraud or misconduct by their companies to the government. The SEC and CFTC, similarly, have guaranteed minimum rewards to whistleblowers for their information, as has the IRS. The concept of incentivized integrity works. But a whistleblower program that does not ensure minimum rewards can offer little more than an illusory promise.

The second issue with the bill is the internal reporting requirement. I can think of no other effective law enforcement paradigm that requires that the target of the investigation is notified before the government can investigate. In my experience, whistleblowers often prefer to report internally. But since not all internal compliance programs are equal, they have to make the choice about whether or not reporting internally to the company will target them for retaliation. In addition, by requiring a whistleblower to report internally, the government effectively cuts off access to continued information about the misconduct within the company, giving the company an opportunity to coach further witnesses, destroy evidence, or otherwise thwart what could be an effective secret government internal investigation.

I urge the committee to correct these two issues, because without these corrections the program is doomed to failure. I am happy to answer your questions. Thank you.

Mr. BURGESS. The gentleman yields back. The chair thanks the gentleman.

[The prepared statement of Mr. Lawrence follows:]

TESTIMONY OF CLEVELAND LAWRENCE III
CO-EXECUTIVE DIRECTOR, TAXPAYERS AGAINST FRAUD
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMERCE, MANUFACTURING, AND TRADE
REGARDING
“LEGISLATIVE HEARING ON VIN DATABASE AND
AUTO WHISTLEBLOWER BILLS”
FRIDAY SEPTEMBER 25, 2015

Summary of Testimony

The proposed Motor Vehicle Whistleblower Safety Act is an admirable attempt to incentive whistleblowers to expose safety issues within the automobile industry that might result in the imposition of monetary sanctions from the U.S. Department of Transportation. However, the bill fails to recognize several important principles that are essential to an effective whistleblower program. We have a thirty-year track record of success recovering stolen taxpayer dollars through the qui tam provisions of the False Claims Act, and that success has been replicated at the state level – as there are now 30 state FCA statutes – and within multiple federal agencies, including at the IRS, SEC, and CFTC – which have created whistleblowers programs to expose the most substantial fraud schemes against those agencies. All of these programs guarantee successful whistleblowers minimum rewards for their efforts and information, and none requires employee-whistleblowers first to report the misconduct to their employers before providing the information to the government.

By ignoring these fundamental principles of effective whistleblower programs, the proposed Motor Vehicle Whistleblower Safety Act will inevitably fail to incentivize whistleblowers to come forward, due to fears of reprisal in the workplace coupled with concerns that no reward will be paid even after the government collects monetary sanctions based on their work. I encourage the Subcommittee to look to False Claims Act laws, as well as the IRS, SEC, and CFTC whistleblower programs for guidance, and I offer my resources to assist the Subcommittee in any way.

**Full Testimony of Cleveland Lawrence III
Co-Executive Director, Taxpayers Against Fraud
Before the
United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade
Regarding
“Legislative Hearing on VIN Database and
Auto Whistleblower Bills”
Friday September 25, 2015**

Good morning Mr. Chairman and members of the Subcommittee, and thank you for inviting me to testify at today’s hearing on the proposed Motor Vehicle Safety Whistleblower Act. My name is Cleveland Lawrence III and I am a Co-Executive Director of Taxpayers Against Fraud (“TAF”) and its sister organization, Taxpayers Against Fraud Education Fund (“TAFEF”), two national non-profit organizations dedicated to combating fraud against taxpayer dollars through the promotion and protection of False Claims Act (“FCA”) laws and *qui tam* provisions – which allow whistleblowers with evidence of fraud against the government to file suit on behalf of the government in exchange for financial rewards of at least 15% and up to 30% of the government’s recovery if those lawsuits are successful. My organizations also support the goals of the IRS, SEC, and CFTC whistleblowers programs, which do not have *qui tam* provisions, but still offer monetary rewards to whistleblowers in exchange for original information regarding significant tax, securities and commodities fraud. I first joined TAFEF in 2008, and became Co-Executive Director in 2013. I am an attorney by training and spent the first six years of my career as an associate at international law firm, Weil, Gotshal & Manges, LLP, where my practice included defending whistleblower claims brought under the federal False Claims Act, among a variety of other commercial litigation matters.

Having examined whistleblower claims from both sides over the past fifteen years, I can say without reservation that the federal False Claims Act¹ is the model statute for any effective whistleblower law or program. Since it was overhauled in 1986, the False Claims Act has returned more than \$40 billion to the U.S. Treasury.² This result is due in large part to the significant role whistleblowers play in exposing fraud on the federal fisc. For example, according to the U.S. Department of Justice, federal False Claims Act cases recovered \$5.69 billion for the government in fiscal year 2014, with nearly \$3 billion of that total resulting from lawsuits filed by whistleblowers.³

The unparalleled success of the False Claims Act over a nearly 30-year period should not be – and has not been – ignored. More than half the States and the District of Columbia now have False Claims Act laws to protect their respective taxpayer dollars; and at the federal government’s urging,⁴ most of these state laws generally mirror their federal counterpart. Similarly, when the Tax Relief and Health Care Act of 2006⁵ revamped the IRS whistleblower program in order to combat the most significant tax fraud schemes, the new program adopted several key features modeled after the False Claims Act.⁶ Moreover, when the SEC and CFTC whistleblower offices were created to combat fraud on the securities and commodities

¹ 31 U.S.C. 3729 *et seq.*

² See Civil Division, U.S. Department of Justice, *Fraud Statistics – Overview*, Nov. 20, 2014, available at <http://www.taf.org/DOJ-FCA-Statistics-2014.pdf> (last visited Sept. 22, 2015).

³ See U.S. Department of Justice Office of Public Affairs, *Justice Department Recovers Nearly \$6 Billion from False Claims Act Cases in Fiscal Year 2014*, Nov. 20, 2014, available at <http://www.justice.gov/opa/pr/justice-department-recovers-nearly-6-billion-false-claims-act-cases-fiscal-year-2014> (last visited Sept. 22, 2015).

⁴ The Deficit Reduction Act of 2005, Pub.L. 109-171, amended section 1909 of the Social Security Act by adding a provision that incentivizes States to enact FCA legislation that is at least as effective as the federal law in facilitating *qui tam* suits. States that enact qualifying False Claims Act laws will receive a ten percentage point increase when splitting FCA recoveries in Medicaid cases with the federal government.

⁵ Pub.L. 109-182,

⁶ See Internal Revenue Service, *History of the Whistleblower/Informant Program*, Feb. 20, 2015, available at, <http://www.irs.gov/uac/History-of-the-Whistleblower-Informant-Program> (last visited Sept. 22, 2015) (discussing the program’s reward structure).

marketplaces as part of 2010's Dodd-Frank Wall Street Reform and Consumer Protection Act, both Commissions looked to the False Claims Act for guidance and adopted key FCA provisions.⁷

While I applaud and fully endorse the effort to enact whistleblower legislation to make automobiles and road travel safer, I cannot support the proposed Motor Vehicle Safety Whistleblower Act in its current form, as the bill suffers from some of the most serious deficiencies that have already been recognized and corrected in the False Claims Act, IRS, SEC, and CFTC contexts. I will now discuss the bill's two primary weaknesses – either of which is significant enough to derail the program.

Lack of Guaranteed Minimum Rewards

Sections 30172 (b)(1) and (c)(1)(A) of the bill grant the Secretary of Transportation unfettered discretion over the amount to award (up to the maximum) to whistleblowers whose efforts and information resulted in the government recovering monetary sanctions from a motor vehicle manufacturer, part supplier, or dealership – including the option to award nothing at all. Such a framework will render the whistleblower program totally ineffective. Decades of experience have made clear that any whistleblower program will inevitably fail unless it provides a guaranteed minimum award for those who risk their careers to come forward; and since the Motor Vehicle Safety Whistleblower Act would only allow employees to serve as whistleblowers, every individual who blows the whistle under the program will risk his or her job to do so.

Before the False Claims Act was amended in 1986, it lacked a minimum reward structure and was a failure – and only recovered \$54 million during the prior year.⁸ Since the Act was

⁷ See Pub. L. No. 111-203, §§ 748(b)(1)(a) and 922(a)(b)(1)(a) (creating reward structures similar to the FCA model).

amended to include guaranteed minimum rewards, whistleblower claims have steadily increased and annual recoveries have been in the billions in recent years.⁹ Similarly, before Dodd-Frank was enacted, the SEC for two decades had operated a bounty program for whistleblowers to report insider trading violations. That program was a failure, though, as it did not guarantee minimum rewards to successful whistleblowers; only six whistleblowers received rewards under the program, and the total awarded was slightly more than \$1 million.¹⁰ Whistleblowers were simply unwilling to risk their livelihood without the assurance of some compensation for doing so. Dodd-Frank addressed this shortcoming by providing mandatory 10% minimum rewards to successful whistleblowers under the SEC whistleblower program.¹¹ Since the change was made, whistleblowers have flocked to the SEC with information regarding serious securities law violations. According to the SEC Whistleblower Office's 2014 Annual Report to Congress, last fiscal year alone the Office paid nine whistleblower rewards, including a \$30 million payment.

⁸ U.S. Congress Hearing of the Senate Committee on the Judiciary, "The False Claims Act Correction Act (S. 2041): Strengthening the Government's Most Effective Tool Against Fraud for the 21st Century," testimony of Michael Hertz, Deputy Assistant Attorney General, Department of Justice Civil Division, Feb. 27, 2008, *available at* http://www.judiciary.senate.gov/imo/media/doc/hertz_testimony_02_27_08.pdf (last visited Sept. 22, 2015).

⁹ See DOJ Press Release, *supra*, note 2.

¹⁰ Securities and Exchange Commission, Office of Inspector General, Office of Audits, *Assessment on the SEC's Bounty Program*, March 29, 2010, at p. 4-5, *available at* <http://www.sec.gov/about/offices/oig/reports/audits/2010/474.pdf> (last visited Sept. 22, 2015) (discussing the less than \$200,000 in rewards paid to only five whistleblowers during the 20-year history of the bounty program); Security and Exchange Commission, Litig. Release No. 21601, *SEC Awards \$1 Million for Information Provided in Insider Trading Case*, July 23, 2010, *available at* <http://www.sec.gov/litigation/litreleases/2010/lr21601.htm> (last visited September 22, 2015) (announcing the final, \$1 million reward paid under the old bounty program to a sixth whistleblower – two days after Dodd-Frank was enacted).

¹¹ See Pub. L. No. 111-203 § 922(a)(b)(1)(a).

The IRS also recognized the importance of guaranteeing minimum rewards to successful whistleblowers, and changed its primary whistleblower program accordingly.¹²

Despite this universal trend toward guaranteed minimum rewards, the bill moves in the opposite direction. The concept of “incentivized integrity” works. However, a whistleblower program that does not ensure even a minimum reward to whistleblowers who produce results can offer little more than an illusory promise. Moreover, although the bill provides that whistleblowers will have the right to appeal the Secretary’s award determinations, since the Secretary’s determinations are wholly discretionary,¹³ the appellate right is effectively rendered toothless. A whistleblower program that suffers from these deficiencies will be doomed from the start.

Internal Reporting Requirement

I cannot think of any effective law enforcement paradigm that requires notification to potential wrongdoers before prosecuting officials will initiate an investigation of alleged violation. In fact, the FCA takes exactly the opposite approach, as it specifies that whistleblowers must report the frauds they discover to the government by filing their complaints under seal, to allow the government an opportunity to investigate the fraud allegations in secret. The SEC and CFTC whistleblower programs take a slightly different approach, but still allow whistleblowers to decide whether or not to report internally before contacting appropriate government officials. Under the SEC and CFTC whistleblower programs, employees who report

¹² See Internal Revenue Service, *What Happens to a Claim for an Informant Award (Whistleblower)*, Feb. 20, 2015, available at [http://www.irs.gov/uac/What-Happens-to-a-Claim-for-an-Informant-Award-\(Whistleblower\)](http://www.irs.gov/uac/What-Happens-to-a-Claim-for-an-Informant-Award-(Whistleblower)) (last visited Sept. 22, 2015).

¹³ See Bill at section 30172 (h)(1).

internally before contacting the government will receive a “plus” factor when a reward determination is made.¹⁴

In my experience, whistleblowers often prefer to report internally – if a trustworthy mechanism is available. FCA laws and effective whistleblower programs have created incentives for corporate internal compliance programs to work. However, not all internal compliance programs are created equal. In addition, the most significant fraud schemes are often directed from the top. Over the years, I’ve witnessed countless examples of the serious consequences whistleblowers can suffer when they report internally to ineffective compliance programs that are designed to ferret out the “snitches.” When whistleblowers know that their internal reports will fall on deaf ears within their companies, they may feel compelled immediately to report their concerns to the government – and they should be encouraged to do so.

I recognize that the bill permits whistleblowers to disregard the internal reporting requirement under certain circumstances: (1) when the whistleblower reasonably believes that reporting internally will result in retaliation; (2) when the whistleblower reasonably believes that the information was already reported internally; (3) when the whistleblower reasonably believes that the information was already the subject of an internal investigation by the company; or (4) when the whistleblower reasonably believes that the company already knew about the fraud.¹⁵ However, these “exceptions” completely swallow the rule whenever a whistleblower is alleging fraud and not mistakes or mere negligence. Each exception is based on the premise that

¹⁴ See e.g. Securities and Exchange Commission Office of the Whistleblower, *Frequently Asked Questions*, at no. 6, available at http://www.sec.gov/about/offices/owb/owb-faq.shtml#P13_4032 (last visited Sept. 22, 2015); Commodity Futures Trading Commission Whistleblower Program, *Frequently Asked Questions*, at no. 7, available at <http://www.cftc.gov/ConsumerProtection/WhistleblowerProgram/WhistleblowerFrequentlyAskedQuestions/index.htm#question7> (last visited Sept. 22, 2015).

¹⁵ See Bill at section 30172 (c)(2)(E).

whistleblowers should be excused from the internal reporting requirement if they reasonably believe that their employer is knowingly engaging in the conduct. This “knowing” requirement is central to every fraud case, and therefore, whenever a whistleblower reasonably believes that his or her employer is engaged in fraud, then he or she will qualify for the exception to the rule. Since the exceptions will almost always swallow this rule, the rule is unnecessary. A program that forces whistleblowers to reveal themselves to their employers – thereby risking their jobs and livelihoods before a government investigation commences – cannot realize its full potential.

Correcting these two issues will substantially improve the likelihood of a robust motor vehicle safety whistleblower program. As the bill is considered further, it would be my pleasure to offer my resources to assist the Subcommittee in any way. Thank you for allowing me to testify today. I am happy to answer your questions.

Mr. BURGESS. Mr. Wallace, you are recognized for 5 minutes for your testimony. Thank you.

STATEMENT OF WILLIAM C. WALLACE

Mr. WALLACE. Good morning, Chairman Burgess, Ranking Member Schakowsky, and members of the subcommittee.

I am Will Wallace, a policy analyst for Consumers Union, the advocacy arm of Consumer Reports. We are an independent, non-profit organization that works with consumers and for consumers for a fair, just, and safe marketplace, and to empower consumers to protect themselves. Consumers Union and Consumer Reports have fought for decades to make cars safer and hold companies accountable for the products they sell. We have pushed for effective rules and laws and for safety features such as seatbelts, air bags, and electronic stability control.

Our auto test center works every day to evaluate safety technologies. And we communicate with millions of consumers to help them make informed choices and stay safe. We appreciate the opportunity to testify.

Today's hearing is timely, given the news lately about auto safety and corporate wrongdoing. The Federal settlement with General Motors over ignition switches linked to at least 174 deaths was very disappointing because it didn't nearly go far enough to hold auto companies accountable for hiding the truth. Right on its heels came the news that Volkswagen had cheated on emissions control testing for some 11 million diesel vehicles and covered it up. These news items are sending shock waves through the industry, our government, and the public. The resulting erosion of confidence can't be overstated. And lawmakers need to take action to address this corporate accountability crisis.

The discussion draft and bill before you today attempt to address pieces of the problem. One, the Improving Recall Tracking Act aims to tackle low recall completion rates, while the other, the Motor Vehicle Safety Whistleblower Act, seeks to root out concealed defects. While we are pleased that the subcommittee is pursuing these worthy goals, Consumers Union believes that the two proposals fall far short both in terms of meeting their objectives and in terms of improving the flawed system that is supposed to ensure safety defects are identified and repaired before people get hurt.

The GM fiasco, along with crises involving defects in Toyota, Takata, and Chrysler products among others, made clear that auto companies must do far more to ensure their vehicles are safe. And NHTSA must do far more to hold auto companies accountable. Yet, the drafts before the subcommittee today are strikingly limited in their ambition.

The Improving Recall Tracking Act could possibly help companies reach owners of older vehicles in case of a recall if it were fully funded. But the bill doesn't authorize that funding, despite requiring NHTSA and the States to carry out a substantial amount of new work. NHTSA, in particular, needs to be able to hire more staff to protect the public the way we all expect, not have them stretched more than they already are.

Similarly, the Whistleblower Act could incentivize auto industry employees to give NHTSA information about concealed defects.

Just imagine how much suffering could have been prevented if a GM engineer had reported the flawed ignition switch to NHTSA in 2006 or 2007. However, we are concerned the bill may not be as effective as it could be, primarily because of the lack of an established minimum award that at least covers the loss of earnings a whistleblower could face by sacrificing his or her career.

More broadly, though, the discussion draft and bill today don't do nearly enough for consumer safety. Instead, we urge you to take up bolder legislation, such as H.R. 1181, the Vehicle Safety Improvement Act. That bill would address shortfalls in current law, such as NHTSA's inadequate civil penalties authority and the loophole that allows dealers to sell recalled used vehicles before they are repaired. In addition to these measures, Consumers Union also encourages the enactment of a criminal penalties provision to deter executives from hiding defects.

The bill would strengthen NHTSA by authorizing the additional funding it badly needs, giving it imminent hazard authority like CPSC and FDA have, and making sure it receives more detailed information from manufacturers through early warning reporting. The bill would empower consumers by giving them free access to more safety information and by making NHTSA's existing databases, which can be clumsy, confusing, and hard for an ordinary consumer to use, more timely and more readily searchable. The Vehicle Safety Improvement Act would create an auto safety system that is proactive, identifying defects before they reach epidemic proportions. And we urge members to advance it. We also urge members to create a strong safety title for a possible highway bill. In addition to requiring that rental car companies fix recalled vehicles before they offer them to consumers, as the Senate transportation bill does, such a safety title should include the needed reforms just outlined. Thank you.

Mr. BURGESS. The gentleman yields back. The chair thanks the gentleman.

[The prepared statement of Mr. Wallace follows:]



POLICY & ACTION FROM
CONSUMER REPORTS

Statement of William C. Wallace, Policy Analyst, Consumers Union
Before the U.S. House of Representatives Committee on Energy and Commerce
Subcommittee on Commerce, Manufacturing, and Trade

“Legislative Hearing on VIN Database and Auto Whistleblower Bills”
Friday, September 25, 2015

Summary

- Lawmakers need to take strong action to address the corporate accountability crisis in the auto industry – exemplified by the GM fiasco.
- While pleased that the Subcommittee seeks to improve motor vehicle safety through legislation, Consumers Union, the public policy and advocacy arm of Consumer Reports, believes that the two pending discussion drafts fall far short of what is needed to ensure defects are identified and repaired before consumers get hurt.
- The potential benefit of the Improving Recall Tracking Act—ensuring owners of older vehicles can be contacted in case of a recall—is far outweighed by the lack of additional funding for NHTSA or the states. The potential benefit of the Motor Vehicle Safety Whistleblower Act—incentivizing auto industry employees to report information about a defect to NHTSA—is jeopardized by language regarding internal reporting and the lack of an established minimum award.
- More fundamentally, these proposals do not go far enough to bolster consumer safety—particularly following several major auto safety crises in the last few years.
- Instead of considering these discussion drafts, we urge the Subcommittee to take up broader, bolder legislation such as H.R. 1181, the Vehicle Safety Improvement Act of 2015. The bill would: (1) address shortfalls in current law, through greater civil penalties and a ban on selling unrepaired, recalled used cars; (2) strengthen NHTSA through additional funding, imminent hazard authority, and better Early Warning Reporting; and (3) empower consumers through greater public access and usability for safety information reported to NHTSA.
- The Subcommittee and the full House should move forward on this bill. Also, if members consider a safety title for a highway bill, they should include these needed reforms.

Good morning, Chairman Burgess, Ranking Member Schakowsky, and members of the Subcommittee. My name is Will Wallace, and I am the safety policy analyst for Consumers Union, the public policy and advocacy arm of Consumer Reports. Consumer Reports is the independent nonprofit organization that works for a fair, just, and safe marketplace for all consumers, and to empower consumers to protect themselves.

Consumers Union and Consumer Reports have fought for decades to make cars safer, and to make sure that companies are held accountable for the products they sell. Working with consumers and for consumers, we have pushed for stronger laws, better standards, and for safety features such as seat belts, air bags, and electronic stability control to be made standard. We work every day at our Auto Test Center to evaluate safety technologies, ranging from the newest child car seats to automatic emergency braking, and we communicate with millions of consumers to help them make informed choices and help them stay safe on the roads.

We appreciate the opportunity to testify on the two draft bills before you today, because they are generating a discussion about what steps the Subcommittee should take to increase consumer safety on our roads. This hearing is very timely, given the enormous amount of news recently about auto safety and corporate accountability. The government settlement with General Motors over faulty ignition switches that have been linked to at least 174 deaths was very disappointing because—among other reasons—it didn't go nearly far enough to hold GM officials personally accountable for their involvement, and for hiding the truth. Right on the heels of that settlement was the news that Volkswagen had cheated on emissions control testing for some 11 million diesel vehicles—and they had covered it up.

This news is sending shock waves through the industry, the government, and the public. The erosion of confidence cannot be overstated. Lawmakers need to take action to address this corporate accountability crisis.

Today this Subcommittee is focused on two bills that attempt to address pieces of the problem. One of the bills, the Improving Recall Tracking Act, aims to tackle low recall completion rates for older cars, while the other, the Motor Vehicle Safety Whistleblower Act, is intended to ensure defects are uncovered when auto companies fail to report them as required.

While we are pleased that the Subcommittee is pursuing these goals, Consumers Union believes that these two discussion drafts fall far short—both in terms of meeting their objectives, and improving the flawed system that is supposed to ensure defects are identified, and repaired, before people get hurt. We urge the Subcommittee to instead take up legislation that would meaningfully bolster consumer safety, such as H.R. 1181, the Vehicle Safety Improvement Act of 2015.

Since it became clear last year just how deeply and recklessly General Motors deceived the public, there have been many calls for action. Consumers recognize that the system did not work. Federal law, specifically the Motor Vehicle Safety Act, assigns joint responsibility to the government and industry to spot defects and get them fixed. The GM fiasco—along with crises involving defects in Toyota, Takata, and Chrysler products, among others—made clear that auto

companies must do far more to ensure their vehicles are safe, and the National Highway Traffic Safety Administration (NHTSA) must do far more to hold auto companies accountable.

Yet, the drafts before the Subcommittee today offer strikingly limited advances for consumer safety—and even then, these advances would come about only if the bills are fully funded, implemented, and revised in important ways. The Improving Recall Tracking Act could help auto companies reach consumers, especially owners and lessees of older vehicles, in case of a recall, and could make NHTSA's *safercar.gov* more useful by allowing VIN searches for multiple vehicles. However, this potential benefit is far outweighed by the fact that this draft authorizes no additional funding for NHTSA or the states yet requires them to carry out a substantial amount of new work. NHTSA, in particular, is chronically underfunded. To protect the public the way we all expect, it needs to be able to hire more staff—not have them stretched more thinly than they already are.

Moreover, the bill does not address other clear factors contributing to recall completion, such as consumer confusion about recall notices and the very real inconvenience of taking a car to a dealer for repairs. The Subcommittee should consider potential solutions to these problems, such as requiring manufacturers to include an in-car alert for recalled cars with infotainment systems and requiring dealers to provide consumers with a free, safe loaner vehicle if repairs are going to take longer than a certain amount of time.

Similarly, the Whistleblower Act could incentivize auto industry employees to give NHTSA information about covered-up defects and require the agency to keep this information

confidential. Just imagine how much suffering could have been prevented if a GM engineer had reported the flawed ignition switch to NHTSA in 2006 or 2007. However, we are very concerned the bill may disincentivize potential whistleblowers, and not be as effective as it could be, for two main reasons: first, because of the presence of language allowing the denial of an award if the whistleblower fails to report or attempt to report the information internally; and second, because of the lack of an established minimum award that at least covers the loss of earnings a whistleblower could face by sacrificing his or her career.

More broadly, though, these discussion drafts do not go nearly far enough to bolster consumer safety. Instead, we urge you to take up bolder legislation, such as H.R. 1181, the Vehicle Safety Improvement Act of 2015. The bill would:

- **Address shortfalls in current law**, by increasing NHTSA's inadequate civil penalties authority—which clearly does not hold auto companies accountable and deter law-breaking as it should—and closing the loophole that allows dealers to sell or lease used cars before they are repaired. We would also strongly encourage the enactment of a criminal penalties provision to deter executives from hiding defects.
- **Strengthen NHTSA**, by authorizing the additional funding it desperately needs; giving it imminent hazard authority, just like the CPSC and FDA have, to get the most dangerous products recalled immediately; and making sure it receives more detailed information from manufacturers through Early Warning Reporting that will help make the program more useful to NHTSA's work.

- **Empower consumers**, by giving them free access to the full text of manufacturers' communications to dealers dealing with a defect or noncompliance, and by making NHTSA's existing public databases—which can be clumsy, confusing, and hard for an ordinary consumer to use—more timely and more readily searchable.

The Vehicle Safety Improvement Act would create an auto safety system that is less reactive, and more proactive, in identifying safety defects before they reach epidemic proportions. We would urge the Subcommittee and the full House to move forward on this bill. Separately, we would also urge members to create a strong safety title in any long-term highway bill. In addition to requiring that rental car companies fix recalled vehicles before they offer them to consumers—as the Senate surface transportation bill does—such a safety title, if advanced, should also include the needed reforms that I have just outlined. Thank you.

Mr. BURGESS. Mr. Karr, you are recognized for 5 minutes for your testimony please.

STATEMENT OF SHANE KARR

Mr. KARR. Thank you, Mr. Chairman, Ranking Member Schakowsky, Ranking Member Pallone. I appreciate the opportunity to testify on behalf of the Alliance of Automobile Manufacturers today.

I know that our time is limited. And my complete statement is submitted for the record. So I will limit my remarks here and try to focus on the big picture. You have asked me to testify about these two—the discussion draft and a bill today. Let's talk first about the Improving Recall Tracking Act. Auto manufacturers are committed to keeping their products safe. And when a safety defect is identified, we want to undertake a recall. And we want all of the recalled vehicles to be repaired.

There are at least two challenges to completing repairs on recalled vehicles. One, of course, is consumer motivation. In this country, consumers make the choice whether or not to get their vehicles repaired. We want them all to get their vehicles repaired. We urge them to get their vehicles repaired. You all have done that from the dais over the course of the last couple of years. But, at the end of the day, consumers make that choice.

In an effort to sort of understand why people wouldn't get their vehicles repaired, my CEO, when he was testifying in front of the committee earlier this summer, noted that we were undertaking the first of its kind comprehensive study into consumer motivations. Global Automakers and the National Automobile Dealers ended up joining us. And we have been working together. And, as Mr. Bozzella stated, we are close to wrapping that up and look forward to briefing you all. We have actually been in touch about setting up a briefing for you all next month.

But putting consumer motivation aside, we know and you all saw over the last year or two that reaching all consumers in the first place is a significant challenge. It just is. One of the great things about the U.S. is we are a highly mobile economy. People move at the rate of about 17 percent a year. NHTSA, in analyzing vehicle completion—recall completion rates, has said that for those new vehicles in the sort of zero to 4 year-old time frame, about 83 percent of those get repaired. It is a very high percentage. But as soon as you start tracking further out, the completion rate numbers fall off dramatically.

Five to ten years, 44 percent completion rate. Over 10 years, 15 percent completion rate. At least part of the explanation for that is the challenge associated with actually reaching subsequent owners of vehicles. Mr. LaFeir's testimony is terrific. My companies, I think all of them probably use his service to contact consumers. But in reading his testimony, they admit that part of the problem is there is not uniformity among the states in the records they keep with regard to registration, how quickly those are updated. That is part of the reason why his company is so effective and why my companies use it is because they reach all these different data points beyond registrations so that we can notify consumers. The draft not only requires this information to be submitted into a na-

tional VIN database that would be accessible for recall purposes, but it effectively standardizes the information that would be collected and the timetables.

So it would, in fact, ensure that when we go to undertake a recall, we have a comprehensive set of timely contact information to work from and try to reach these owners of older vehicles who are still required to register those vehicles in the States. My testimony notes some other technical issues with the bill. But I think from the big picture standpoint, that is the issue that we are focused on. And it's worthy of further consideration.

With regard to the Motor Vehicle Safety Whistleblower Act, I would say just very briefly, that bill was introduced in the Senate last fall. The Alliance immediately reached out to staff on both sides of the aisle and Members. That bill had very strong bipartisan support. We expressed our concerns and worked through them. I never heard, frankly, in that time the issues that are being raised here today. That bill obviously passed by unanimous consent in the Senate. And we wouldn't object to you all taking it up and passing it over here. And with that, I will let myself open for questions.

Mr. BURGESS. The gentleman yields back. The chair thanks the gentleman.

[The prepared statement of Mr. Karr follows:]



AUTO ALLIANCE
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**STATEMENT
OF
*THE ALLIANCE OF AUTOMOBILE MANUFACTURERS***

**BEFORE THE:
THE HOUSE ENERGY AND COMMERCE SUBCOMMITTEE ON
COMMERCE, MANUFACTURING AND TRADE**

SEPTEMBER 25, 2015

**PRESENTED BY:
SHANE KARR
VICE PRESIDENT, FEDERAL GOVERNMENT AFFAIRS**

Executive Summary

- In the last decade (2003 – 2013) the US has experienced major reductions in traffic fatalities – a twenty five percent (25%) overall reduction and a thirty two percent (32%) reduction in passenger vehicle fatalities.
- The National Highway Traffic Safety Administration (NHTSA) estimates that ninety eight (98%) of crashes are caused primarily by driver error or environmental factors.
- Alliance members are committed to putting additional safety enhancements into the field and continue to develop new technologies to help drivers avoid crashes in the first place. At the same time, auto manufacturers stand by their products by identifying and repairing safety defects, when they arise.
- In a highly mobile society, one of the key problems for manufacturers conducting safety recalls is contacting vehicle owners, particularly after vehicles change hands.
- The Alliance believes the proposed Improving Recall Tracking Act could enhance a manufacturer's ability to contact owners of recalled vehicles by establishing a National VIN Database (NVD) comprised of the most accurate and timely registration data from the States.
- The Alliance notes a few issues worthy of further consideration, such as clarifying when registration data would be updated; allowing use of the NVD for emissions – as well as safety—recalls; and enabling use of the NVD for alternative means of notification.
- The Alliance does not object to the draft House companion to S. 304, the Motor Vehicle Safety Whistleblower Act. The Alliance worked with the Senate sponsors of S. 304 to ensure that manufacturers have the opportunity to address safety issues internally as quickly as possible.

Testimony

On behalf of the Alliance of Automobile Manufacturers (Alliance), thank you for the opportunity to testify today on the proposed Improving Recall Tracking Act and Motor Vehicle Safety Whistleblower Act. Alliance members account for 77% of annual car and light truck sales in the United States. The Alliance counts amongst its diverse membership companies headquartered in the U.S., Europe and Asia, including the BMW Group, Fiat Chrysler Automobiles, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America and Volvo Cars North America.

While the number of recalls has increased in recent years, the facts are indisputable: passenger vehicles today are safer than they have ever been. In the last decade (2003 – 2013) the US has experienced major reductions in traffic fatalities – a twenty five percent (25%) overall reduction and a thirty two percent (32%) reduction in passenger vehicle fatalities. These are not declines in the rate of traffic deaths, but more remarkably, an absolute decline in the number of fatalities. This progress comes even as the number of Americans driving and vehicle miles driven has increased dramatically.

The National Highway Traffic Safety Administration (NHTSA) estimates that ninety eight (98%) of crashes are caused primarily by driver error or environmental factors. The small percentage of crashes in which vehicle-related factors play a primary role typically result from improper maintenance of tires, wheels and brakes, such as worn or underinflated tires that lead to blow outs and loss of control by drivers.

Alliance members are committed to putting additional safety enhancements into the field and continue to develop new technologies to help drivers avoid crashes in the first place. We are focused on the future of automotive safety. This includes developing technologies to reduce impaired driving and engineering vehicles to avoid circumstances that may lead to a crash.

Motor vehicle safety is a shared responsibility. Auto manufacturers are required by law to identify safety defects and implement recalls under NHTSA's supervision. But ultimately, individual vehicle owners decide whether or not to get their vehicles repaired. According to NHTSA, the average consumer participation rate for light vehicle recalls after one and a half years of reporting is seventy five percent (75%); however, that rate varies markedly based on the age of the vehicle involved in the recall. For newer vehicles, the participation rate averages eighty three percent (83%); for vehicles 5 to 10 years old, that rate drops nearly in half, to forty four percent (44%); and for vehicles older than 10 years old, the participation rate drops by

another two-thirds, to fifteen percent (15%). We know that participation rates vary by vehicle age, but we don't have a good understanding of why some vehicle owners don't respond to – in many instances – multiple notices that their vehicle needs free repairs to fix a safety-related defect.

That is why, earlier this year, the Alliance initiated a multi-faceted research initiative that marks the first comprehensive effort by industry or government to understand what motivates consumers to have their recalled vehicles remedied. We have been joined in this effort by Global Automakers and the National Automobile Dealers Association. Alliance CEO Mitch Bainwol previewed our effort to the Committee at a hearing in June and promised that we would invest the resources necessary to complete the study in a timely fashion to help inform not only your work but also the work of NHTSA. I am pleased to report that the research is almost finished, and we look forward to providing a full briefing to this Committee and other stakeholders next month.

Setting consumer motivations aside, one long-recognized challenge to maximizing recall participation rates is actually getting recall notices to all of the owners of affected vehicles. One of the key problems for auto manufacturers is locating new owners after vehicles change hands. But even contacting a vehicle's original owner can be difficult, because we live in a highly mobile society. Seventeen percent (17%) of Americans – 45 million people – move annually. This means that addresses become stale fairly rapidly. Worse, thirty percent (30%) of Americans change email addresses annually. Automakers work to overcome these challenges by relying on commercial third party data to help provide accurate owner contact information, but the industry remains in search of additional ways to increase the accuracy and timeliness of this information.

That is why the Alliance appreciates the intent behind the proposed Improving Recall Tracking Act. The Alliance believes this legislation could improve a manufacturer's ability to contact owners of recalled vehicles by establishing a National VIN Database (NVD) comprised of the most up-to-date registration data from the States. The bill includes important consumer privacy protections: DOT would be required to ensure the security of the NVD and the information in the NVD would be exempt from disclosure under FOIA. Additionally, manufacturers would be able to access the contact information only on a limited basis – for vehicles that are under a safety recall. As the Committee reviews this draft bill, there are a few issues worthy of further consideration.

First, Section 2(b)(3) requires States to provide updated information within 7 days any time a vehicle is "subsequently" registered "in the State," but the bill does not specify the requirements for new registrations. This may have been a deliberate choice by the drafters, but the reason for the distinction is not apparent. Additional clarity regarding timely

notification of new registrations is important to assure the completeness and accuracy of the NVD. This works to assure that the requirement applies to not just subsequent owners within a state, but also re-registrations by the same owner with new contact information and registrations from out of state.

Second, the bill also should more clearly specify who is eligible to request owner contact information from the database in Section 2(c), perhaps by referencing the definition of manufacturer used elsewhere in title 49 of the U.S. Code.

Third, the Alliance notes that, as drafted, the use of contact information is limited to legally required Owner Notification Letters. With the encouragement of NHTSA, Alliance members are working on new, innovative ways to reach consumers, in addition to a traditional Owner Notification Letter. These additional methods would also benefit from use of the most up-to-date contact information.

Fourth, under the Clean Air Act (which also falls within this Committee's jurisdiction), manufacturers are required to perform recalls for emissions systems that are not compliant with federal standards. While emissions defects do not threaten traffic safety, they have environmental consequences that are important for manufacturers to mitigate. The Committee should consider allowing manufacturers the ability to access the NVD for emissions recalls, as well as safety recalls.

Finally, Section 2(e) requires NHTSA to update www.safercar.gov to allow multiple VIN searches. This requirement does not relate to the NVD, but rather to the existing databases that inform consumers whether there is an open recall on a specific vehicle. The Alliance is not opposed to "batch search" capability; however, we are aware of existing commercially available tools to accomplish batch searching that may obviate the need for the government to build a redundant system.

The Committee is also considering a House companion to S. 304, the Motor Vehicle Safety Whistleblower Act, which passed the Senate in the spring. Manufacturers are committed to ensuring the safety of their products. On average, auto manufacturers and suppliers have successfully conducted more than 150 light duty vehicle recalls each year since the House passed the TREAD Act in 2000. The Alliance worked with the sponsors of S. 304 to ensure that manufacturers have the opportunity to address safety issues internally as quickly as possible. Consequently, we did not object to its passage. It is noteworthy that in assessing S. 304, the Congressional Budget Office estimated that it would yield only one award in the first ten years after enactment. For their part, Alliance members are committed to ensuring that no awards are necessary.

Thank you again for giving the Alliance the opportunity to comment on the proposed Improving Recall Tracking Act and Motor Vehicle Safety Whistleblower Act. We look forward to working with the Committee during further consideration of these bills.

Mr. BURGESS. It occurs to the chair that I omitted to announce to the subcommittee that members, pursuant to committee rules, all members' opening statements will be made part of the record.

And then I do want to thank all of you for your testimony this morning and sharing your observations with us. We will move into the question portion of the hearing. I will start by recognizing myself for 5 minutes.

And, Mr. Karr, let me come back to you. You mentioned in your testimony that the Auto Alliance, joined by the Global Automakers and the National Automobile Dealers Association, announced that it was conducting the study on what motivates consumers to have their recalled vehicles remedied and you mentioned that you were going to be having a briefing in the near future.

Can you pull back the curtain just a little bit and share with the subcommittee this morning some of the insights you may have gained as to what motives a consumer to have a defect remedied?

Mr. KARR. I would like to be able to do that, but I just saw the preliminaries myself. And, you know, I wouldn't want to mischaracterize anything off the top of my head. We will schedule a full briefing and get the folks who actually conducted the survey in here as well, so you will all have the opportunity to ask them questions as well.

I guess one thing that is relevant to this hearing that we learned is that the vast majority of people who knew that they had had a vehicle recalled within the past 2 years, the vast majority of those people knew because they were contacted by the manufacturer. Even more than we expected. Given all the news media and social media and everything else, the vast majority of people—

Mr. BURGESS. Let me ask you a question about that if you are at liberty to answer it. So they had already been contacted. Had they done the follow through to actually schedule an appointment or had their vehicle defect remedied at that point?

Mr. KARR. Remember, part of the reason for doing the survey was to find out really why people who didn't get their vehicles repaired, you know, why they didn't—why that didn't happen. So we talked to a lot of people who had gotten their vehicles repaired. We talked to a fair number of people who intended to get their vehicles repaired in short order. And, interestingly, there was a group of people who said, "I know my vehicle is under recall, but I don't intend to get it repaired." That was a small minority of the folks that we talked to. But, yes, we talked to all of those people.

Mr. BURGESS. Well, this is, of course, with other hearings into the air bag issues, one of the things that has really concerned the subcommittee; how to get the word out to people to get their vehicles repaired, and the very dangerous situation that may exist in some vehicles.

Apparently the older the vehicle, the greater the risk. And the real problem of once you are on the third or fourth owner of a vehicle, it becomes very difficult to track them down. And then, as you point out, the compliance rate may be lower. You would think with a severe safety defect, something that could blow up in your face, your family's face, you would want it fixed, and it is a little concerning that we haven't been able to do better with that.

I am going to assume, and correct me if I am wrong, that the manufacturers themselves, we can legislate all we want up here, but is there any place for the manufacturer placing an incentive out there before the consumer public, hey, we would like to see your vehicle in here and we will make it worth your while to do so, half price on an oil change or vacuum the floor mats. Are there incentive programs that are being looked at?

Mr. KARR. Yes, I think that there actually are even examples of incentive programs that have been undertaken by a couple of my members surrounding the recent recalls. So, absolutely, I think that that is something to look at.

Interestingly enough, for a lot of consumers, they apparently have concerns if they bring their vehicle in to be recalled, that they will be upsold on other things. So part of this may be assuaging those concerns going forward. There are a lot of different reasons. And it will be interesting, I think you all will find it interesting to unpack why people do or don't do what they do.

Mr. BURGESS. Well, we anxiously look forward to those briefings and perhaps have an opportunity to have you back and discuss those. You mentioned in your testimony, the manufacturers are committed to keeping their products safe. And you believe that, right?

Mr. KARR. Absolutely.

Mr. BURGESS. And, Mr. Bozzella, I spent my productive years in the healthcare industry, and we talked about something in the healthcare industry called continuous quality improvement. You all do that in the manufacturing process. Is that just a matter of course?

Mr. BOZZELLA. Yes, it is.

Mr. BURGESS. And it just seems like it would fit in a culture of continuous quality improvement that if someone sees something that is not right, you would want them to bring it forward. I can't imagine a culture where an employee would say this is going to be a real problem. If I just hang onto this for a while, it might be a very valuable lawsuit for me in the future. Nobody wants that kind of environment, do they?

Mr. BOZZELLA. No. No. You are exactly right. And I think the key there is not only to create that environment but to continue to enhance and develop it through more training, hotlines, both internal and third-party hotlines, the kinds of things that I think you are hearing our members' companies are doing. I think it is critical.

Mr. BURGESS. Great. Thank you. My time has expired. The chair will recognize the ranking member of the subcommittee, Ms. Schakowsky, 5 minutes for your questions, please.

Ms. SCHAKOWSKY. Thank you, Mr. Chairman. Mr. Karr, with all due respect, if Ford or GM said to their stockholders, you know what, consumer motivation just isn't there. This is a free country and people are free not to buy our cars. I am having to assume that in marketing automobiles, which you can hardly turn on the television, it is either a drug ad or it is a car ad, that consumer motivation is deeply researched and figured out and a lot of money is spent to do that.

So don't you think that if the manufacturers were really serious about getting unsafe cars off the road—I look forward to your re-

search. But this idea that, well, consumers, they just don't really want to do it. Really? They want to drive unsafe cars?

Mr. KARR. So, I absolutely agree with you that we need to, and I think my companies are very clearly demonstrating, and actually one of my comments, I should say, in the testimony to the draft bill is actually that, the way the draft bill is written, it actually only would allow us access to that database for the owner notification letters that are required under Title 49. And my guys are doing kind of creative and innovative things to reach out and motivate consumers.

And so we would like you all to consider allowing us to use contact information for these more creative means. Having said that, I do just want to say that the owner notification letters, they are, NHTSA fairly strictly lays out for us what we can say.

Ms. SCHAKOWSKY. I get them. I get it. And I get them. And there has to be a better way. And I wanted to ask Mr. LaFeir, one of the things that we know is that nearly 20 percent of recalled cars are never repaired, recall completion, 44 percent for vehicles 5 to 10 years old, 15 percent for vehicles over 10 years old. And, in fact, the average age of cars on the road is 11.4 years.

So what can we do? I know you have this private sector database which in my testimony I said I thought, it is sort of unusual for me, I am saying let's not have a government solution, let's have a private sector solution, sort of a reversal here. Anyway, so how do we get to the drivers of older cars?

Mr. LAFEIR. I think we have good tools to get the contact and to get the notification out. I think the motivation changes as the vehicles get older. I think data and data analytics are advancing to the point where we can probably put more energy into understanding are there particular groups that are behaving differently than others? And that may be an area to focus on.

Ms. SCHAKOWSKY. OK. Mr. Lawrence, this is speculation but it seems to me since Volkswagen quite deliberately built into their cars this fraudulent emissions switch, whatever they call it, do you think that if a whistleblower internally had said, oh, this is really bad and you have got to fix it, that that would have done the trick?

Mr. LAWRENCE. Certainly not. In our experience, most whistleblowers actually do report the misconduct of their company up the chain of command and, generally speaking, only contact the government after they have suffered the retaliation from the company for bringing their concerns to management.

The False Claims Act takes the exact opposite approach and does not require whistleblowers to bring their information directly to the fraud feasons. Instead, it requires whistleblowers actually to submit their information under seal and only provide it to the government so as not to tip off the target that the government might be investigating potential wrongdoing or fraud.

Ms. SCHAKOWSKY. So it is possible that this requirement could actually make cars more dangerous in the sense that it would require this internal communication?

Mr. LAWRENCE. It certainly adds another step to the process of getting the information to the appropriate government officials. And that delay could certainly result in a more dangerous environment.

Ms. SCHAKOWSKY. One quickie for Mr. Wallace, the limit on violations and civil penalties for violations, it seems \$35 million for GM was too little. What do you think we should do?

Mr. WALLACE. Well, I think we desperately need to raise those in order to provide an effective deterrent against corporate wrongdoing. Especially because we just have to make sure that this is not the cost of doing business. These penalties cannot be considered merely the cost of doing business. It must be a real deterrent.

Ms. SCHAKOWSKY. Thank you. I yield back.

Mr. BURGESS. The gentlelady yields back. The chair thanks the gentlelady. The chair recognizes the ranking member of the full committee, Mr. Pallone, 5 minutes for questions, please.

Mr. PALLONE. Thank you, Mr. Chairman. While this is a hearing on legislative initiatives relating to safety, our committee has direct oversight responsibilities regarding both clean air and deceptive practices. And I would be remiss if I didn't bring up the following issue. As you know, last week, the EPA issued a notice of Clean Air Act violations to Volkswagen and its related companies stating that Volkswagen had manufactured and installed defeat devices in certain model year cars that, "bypass, defeat, or otherwise render inoperable elements of the vehicle's emission control system." Volkswagen has not denied the EPA's assertion so far. In fact, the EPA has said Volkswagen has admitted it designed and installed defeat devices in these vehicles.

In my opinion, to think that one of the world's biggest and most established automakers deliberately set out to perpetrate this kind of scam on consumers is mind boggling and an outrage that harms both consumers and producers. On the one hand, we have consumers who trusted that Volkswagen played by the rules and that purchased cars had the attributes the company said they had. Dare to learn the truth about clean diesel was one of Volkswagen's advertisements. The reality appears to be that its diesel isn't clean and the ads are not true.

Nearly half a million U.S. consumers and millions more around the world have been lured by the idea of a more efficient, less polluting fossil fuel vehicle that now looks to be neither. And those people who are now saddled with vehicles that if repaired, and I am not sure that is the right word, probably won't meet the fuel economy standards that these consumers thought they were paying for. And the cars, themselves, have probably lost a tremendous amount of their resale value.

On the other hand, you have Volkswagen casting doubt on the industry as a whole. The company hasn't just harmed itself, it has harmed the entire industry. Volkswagen's actions, if everybody is wondering whether Volkswagen is the only one with this problem. So to that end, EPA released a letter being sent to vehicle manufacturers notifying them that the agency is adding new evaluations designed to find potential defeat devices.

Mr. Bozzella and Mr. Karr, what do you say to the American consumer, and how do we ensure that they are compensated not just for the economic loss, but for the fraud that appears to have been perpetrated on them? Let's start with Mr. Bozzella and then Mr. Karr.

Mr. BOZZELLA. Ranking Member Pallone, thank you very much. As I mentioned a few minutes ago in my testimony, the very troubling facts that have come to light involving Volkswagen will likely have significant implications for the industry. So I do look forward to working with you and the committee discussing these issues as we go forward.

Mr. PALLONE. Mr. Karr, can you respond?

Mr. KARR. Thank you, Ranking Member. Unfortunately, I don't have any more insight into the facts than have been publicly recorded. I think this is a very unfortunate situation. Volkswagen is a company that has shown its commitment to the American market, including producing vehicles in the United States. But these allegations are not good. And it will clearly have ramifications going forward, as it should.

Mr. PALLONE. Thank you. Mr. Wallace, representing Consumers Union, the policy division of Consumer Reports, would you care to comment?

Mr. WALLACE. Yes. This is a very serious, calculated violation of the law. We at Consumer Reports, we pulled our recommendations of the diesel versions of the Passat and the Jetta. And our CEO, Marta Tellado, recently called for the company and the government response to this betrayal to be significant enough to right the wrongs that have occurred and to bring true justice to the consumer, because this is just that egregious.

Mr. PALLONE. It appears to be totally intentional. That's the point.

Mr. WALLACE. Exactly.

Mr. PALLONE. That is the most important point. I don't know what you say to people at Consumer Reports who are duped into recommending some of these cars to the public and how you convince all of us and our constituents that Volkswagen is an anomaly and that we can afford to trust the industry at all. Mr. Wallace, did you want to comment? The concern now is that this isn't just one car manufacturer, there might be others.

Mr. WALLACE. Well, I work here in our policy office in D.C. But I know that we have a team of committed engineers and technicians up at our test track. And I can tell you that as an organization, Consumer Reports will absolutely put pressure on the manufacturer to make sure that it makes things right.

Mr. PALLONE. All right. Thank you very much. Thank you, Mr. Chairman.

Mr. BURGESS. The chair thanks the gentleman. The chair would note to the gentleman that his concerns are not—they are actually shared by both sides of the dais on the subcommittee as to where the appropriateness of this investigation is. And it is a work in progress. So watch this space. Mr. Butterfield, you are recognized for 5 minutes for questions please.

Mr. BUTTERFIELD. Thank you very much, Mr. Chairman. And I apologize for being in and out of the room. But the developments this morning regarding the Speaker's impending resignation has just caused a lot of telephone traffic in my office both from the media and from constituents. And so I have been back and forth.

But, Mr. Chairman, one of the laudable goals of the VIN look-up registration legislation is to enable manufacturers to reach more

owners of recalled vehicles so that more vehicles will get repaired. And so I would like to focus my questions today on the rental car safety bill that I introduced with the support of Ranking Member Schakowsky and Congresswoman Capps, H.R. 2198. Companion legislation passed the Senate with bipartisan support as part of the Senate's highway bill.

The legislation will help maximize the number of recalled cars that get fixed. That bill is the Raechel and Jacqueline Houck Safe Rental Car Act, which is supported by the rental car industry. Yes, it is. Consumer organizations, General Motors, Honda, and others. That is very impressive. It would ensure that rental car companies fix recalled vehicles in their fleets before, before renting or selling them. And so to you, Mr. Wallace, what is the Consumers Union's position on 2198 if you all have one?

Mr. WALLACE. We strongly support the bill. We think it is well past time that it passes this Congress and close this safety gap that exists. We would also note that it has very, very broad support. And it is only now, it is just up to Congress to get it through.

Mr. BUTTERFIELD. Would it be correct to say that this legislation is critical and it is important?

Mr. WALLACE. Yes.

Mr. BUTTERFIELD. All right. And to you, Mr. Karr, does your organization support 2198?

Mr. KARR. The Alliance does not support the bill as introduced. We have had numerous conversations with staff, primarily on the Senate side, where the counterpart originated, and proposed a number of possible changes to address our concerns, and would be happy to meet with you all and your staff.

Mr. BUTTERFIELD. Can you quantify this for me? What percentage of recalled vehicles are subject to a do not drive warning?

Mr. KARR. Subject to an actual do not drive, it is a small percentage, under 10 percent.

Mr. BUTTERFIELD. That is what we have been informed, yes. Are there any Federal safety standards that dictate when manufacturers must issue the do not drive warning?

Mr. KARR. There are not. However, manufacturers, when a manufacturer issues a recall, before they do that, that has to be basically approved through NHTSA. We submit the language and the proposal for the recall to NHTSA. And they review it and approve it before it goes out.

Mr. BUTTERFIELD. Thank you. I am standing between my colleagues and votes on the floor.

Mr. Chairman, I ask unanimous consent that two letters be submitted for the record, one from LKQ Corporation and the other from the American Car Rental Association and others.

Mr. BURGESS. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. BUTTERFIELD. In addition, Ms. Schakowsky, as she was leaving, asked that I present for the record a statement from the American Association of Motor Vehicle Administrators. I ask unanimous consent.

Mr. BURGESS. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. BUTTERFIELD. Thank you. I yield back.

Mr. BURGESS. The gentleman yields back. The chair thanks the gentleman. The chair does want to thank the panel for being here this morning and for your time and the expert testimony that you have provided to us.

Seeing no further members wishing to ask questions, I would like to take a moment to recognize the contribution of our clerk, Kirby Howard, who after many years of service to the subcommittee on the staff is leaving for new career opportunities. And we obviously wish him well in his future endeavors.

And also before we conclude, I wanted to include the following document to be submitted for the record by unanimous consent, that will be easy, a letter on improving the Recall Tracking Act submitted by Experian. Without objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. BURGESS. Pursuant to committee rules, I remind members they have 10 business days to submit additional questions for the record. I ask the witnesses to submit their responses to these questions within 10 business days upon receipt of the question.

And, without objection, further proceedings of this subcommittee are adjourned.

[Whereupon, at 11:00 a.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. FRED UPTON

Everyone knows I'm from Michigan—the auto state—and that is something I take great pride in. Folks also know that I am disappointed that this committee has been forced to hold multiple hearings over the past few years on motor vehicle recalls. But even when facing these issues, I remain an optimist. I believe that cars are safer today than ever before and the data shows that. The new technologies that are being developed and deployed will make us even safer on the road. Today, we continue our work to keep families in Michigan and across the country safe on the roads by focusing on two bills to improve safety.

The Motor Vehicle Safety Whistleblower Act goes great lengths to ensure that safety violations don't go unreported. Almost fifteen years ago, in the wake of the tragic circumstances involving Ford-Firestone, I authored the bipartisan TREAD Act to get automakers to identify and fix defects earlier and remove flawed cars from the road immediately. While that law has prevented several safety issues from becoming serious disasters, the early warning reporting regime is greatly dependent on the commitment of the auto industry to make it a success. The safety incentives provided in the Motor Vehicle Safety Whistleblower Act are meant to help foster that commitment because as we know, reporting delays cost lives.

The Improving Recall Tracking Act is another legislative proposal we will review today. With any recall, consumers must be notified of the defect so they can get their vehicles fixed. It is unacceptable that there continue to be vehicle owners that have not been notified of a defect or serious safety risk because they cannot be located. Currently, we have 50 different state systems to notify consumers of safety issues leading to unfortunate delays in getting lifesaving information out to the right people. I am also troubled that the challenge of notifying consumers could get worse as the development of new technology platforms enable owners to sell vehicles in nontraditional ways.

Consumer notification is a key part of ensuring that the recall process works. During today's review of the Improving Recall Tracking Act, I look forward to hearing about how the private sector is working with the auto industry to identify consumers affected by a safety recall. I also look forward to hearing how driver registration and vehicle identification numbers are kept up to date in databases maintained by manufacturers and commercial entities, and what considerations are being made to improve the consumer notification process.

As I have said before, there can be no margin of error when it comes to vehicle safety. Lives are on the line—and the public deserves the peace of mind that they

are safe every time they get behind the wheel. I thank Chairman Burgess and this subcommittee for its continued commitment to protecting the driving public.

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

Thank you Mr. Chairman. Today we are discussing two bills related to automobile safety; one intended to help automakers more easily find the current owners of recalled cars and one intended to provide incentives for whistleblowers to submit safety defect information to the National Highway Traffic Safety Administration or NHTSA [NIT-suh].

While I appreciate the effort by this Committee to take action on auto safety, these measures fall short.

According to NHTSA, more than 32 thousand people lost their lives on U.S. roads in 2014. Much more needs to be done to improve the system for detecting and reporting safety defects to NHTSA, and to reduce the number of defective cars that reach consumers in the first place.

Earlier this year, Subcommittee Ranking Member Schakowsky and I, with a number of other members, introduced the Vehicle Safety Improvement Act of 2015 (V.S.I.A.). Our bill would address a number of urgent auto safety issues.

V.S.I.A. improves the Early Warning Reporting system by making more reported information public and requiring manufacturers to provide significantly more information about any fatality involving a safety defect. It includes imminent hazard authority for NHTSA, allowing the agency to expedite a recall order, and increases fines for manufacturers that violate vehicle safety laws.

In addition, it will eliminate geographically limited regional recalls and require reviews of safety standards for back seat passengers and pedestrians.

Regarding today's two bills, I am concerned that they will have little impact on auto safety and divert scarce resources. I cannot support them as currently drafted.

I hope that we can work together to ensure that these bills will truly improve auto safety. And I also hope that together we can take broader actions that will make a larger impact on auto safety.



September 23, 2015

The Honorable Michael Burgess
2336 Rayburn House Office Building
Washington, DC 20515

LKQ Corporation Memo of Concern to Improving Recall Tracking Act

Dear Chairman Burgess:

As a Government Affairs Representative for LKQ Corporation, I applaud your efforts to raise awareness on a much needed consumer protection issue. Improving Recall Tracking Act addresses the need for consumers to receive accurate information concerning motor vehicle recalls in a timely fashion but falls short of protecting consumers and their vehicles to its end-of-life.

The average age of a vehicle is increasing - due in part to the availability of lower cost alternative parts (in this case recycled). Cost conscious consumers and low income families seek to repair their vehicles in a cost effective manner without sacrificing safety.

As the nation's largest distributor of alternative parts we have the best interest of the consumer in mind. We stand behind the products we sell by offering a Limited Lifetime Warranty and a Promise of Protection. Our Promise of Protection provides repair shops with indemnification from liability should a product we sell cause injury, accident or death. Our groundbreaking product liability indemnification is something the auto manufacturers are unwilling to match.

With the number of vehicle recalls growing every year, access to accurate recall information is no longer an option for our industry - it is a necessity. We chose to put our company on the line in support of parts we did not manufacture in order to provide consumers with a promise of protection they can trust. In turn, we ask that our government consider our position in the resale of potentially dangerous products.

Car companies continue to attack our industry through various mediums in an effort to increase their 66% market share on replacement parts. Therefore, they have no incentive to provide our industry with vehicle and parts specific information as it would hurt their bottom line. We currently quarantine recalled parts according to make, model and year rather than individualized VIN. This has the effect of taking potentially usable parts out of the marketplace, which costs us money and reduces competition on those parts for the automakers.

In order to fulfill the car companies' obligations and further provide consumer protection, we suggest:

- Developing an electronic original equipment manufacturer (OEM) automotive part database
 - This database would be used to maintain real-time automotive parts recall updates
 - This includes the ability to identify a previously recalled part that has already been rectified
- Include all OEM parts or component numbers, manufacturer vehicle identification numbers (VINs), specific part names and descriptions, as well as build beginning and end dates
 - Specific part/component numbers including description is important to identify the particular part in need of replacing
 - Build beginning and end dates is critical as manufacturers at times change design/functionality during a model year run

With a record number of recalls and related injuries including deaths, this is not the time put commercial interest before consumer confidence and safety. It is just as critical for automotive recyclers to be able to provide their customers with accurate recall information as it is for the state to its registered motorists.

LKQ Corporation is a leading provider of alternative and specialty parts to repair and accessorize automobiles and other vehicles. LKQ has operations in North America, the United Kingdom, the Netherlands, Belgium, France, Australia and Taiwan. LKQ offers its customers a broad range of replacement systems, components, equipment and parts to repair and accessorize automobiles, trucks, and recreational and performance vehicles. Globally, LKQ has just under 30,000 employees and operates over 630 facilities, offering its customers a broad range of replacement systems, components, equipment and parts to repair, maintain and accessorize automobiles, trucks, and recreational and performance vehicles.

In the United States, LKQ employs over 20,000 people and operates more than 460 facilities in more than 44 states.

As Chairman of the Commerce, Manufacturing, and Trade Committee, I hope you will recognize the concerns this bill poses to the alternative parts industry and to consumers across the nation. On behalf of LKQ Corporation, I ask you to please consider our suggestions.

Please do not hesitate to contact me if you have any questions. I can be reached at (954) 492-9092.

Respectfully,



Ray Colas
Government Affairs Representative
LKQ Corporation

**SUBMITTED WRITTEN STATEMENT
OF THE
AMERICAN CAR RENTAL ASSOCIATION
HOUSE SUBCOMMITTEE ON COMMERCE, MANUFACTURING AND TRADE
LEGISLATIVE HEARING ON
VIN DATABASE AND AUTO WHISTLEBLOWER BILLS
IN SUPPORT OF H.R. 2198
“THE RAEHEL AND JACQUELINE HOUCK SAFE RENTAL CAR ACT OF 2015”**

September 25, 2015

Introduction

Good morning, Chairman Burgess, Ranking Member Schakowsky and Members of the Commerce, Manufacturing and Trade Subcommittee of the Energy and Commerce Committee. The American Car Rental Association (ACRA) respectfully submits this written statement and ask that it be included as part of the Subcommittee’s record for the hearing today.

The hearing today focuses on two legislative proposals -- the “Motor Vehicle Safety Whistleblower Act” and the “Improving Recall Tracking Act” -- that concern the vehicle notification and recall process under the Motor Vehicle Safety Act. To the extent that the hearing is in contemplation of legislative action by the Subcommittee in this area, ACRA would like to take this opportunity to express the car rental industry’s strong support for H.R. 2198, “The Raechel and Jacqueline Houck Safe Rental Car Act of 2015,” that concerns the recall process and the car rental industry. Further, ACRA respectfully encourages the Subcommittee’s favorable action on this bill and its inclusion in the “base text” of surface transportation legislation that the Subcommittee or full committee may consider in the near future.

ACRA is the national representative for over 98% of our nation’s car rental industry. ACRA’s membership is comprised of more than 300 car rental companies, including all of the brands you would recognize such as Alamo, Avis, Budget, Dollar, Enterprise, Hertz, National and Thrifty. ACRA also has as members many mid-size, regional car rental companies as well as smaller, “Mom & Pop” operators. ACRA members have over two million registered vehicles in service, with fleets ranging in size from one million cars to ten cars.

ACRA applauds this Subcommittee for its continued interest in auto safety legislation. Our 300-plus member organization has come together in an unprecedented partnership between an industry trade group and consumer safety organizations and advocates in support of H.R. 2198 and to urge Congress

to enact the legislation. H.R. 2198 was introduced in the House early this year on a bipartisan basis and a companion bill (S. 1173) also was introduced in the Senate. The House bill was referred to the Committee on Energy and Commerce and to this Subcommittee. In July, the Senate passed S. 1173, as a part of that chamber's long-term reauthorization legislation of federal surface transportation programs. We strongly encourage the House to follow the Senate's example and incorporate H.R. 2198 into the House's surface transportation reauthorization legislation.

The Car Rental Industry and Consumer Safety

In 2004, Rachel and Jacqueline Houck were killed while driving a rental car that had an unrecalled safety recall. H.R. 2198, the legislation named in their memory, was introduced in the House by Representatives Lois Capps (D-CA), Walter Jones (R-NC), G.K. Butterfield (D-NC) and Jan Schakowsky (D-IL) on May 1, 2015.

The Safe Rental Car Act would prohibit rental companies from renting or selling cars subject to a federal safety recall unless they have been repaired. The only exception to this rule would be if the manufacturer identified an interim measure that could be taken while the permanent repair was being developed that would eliminate the risk. Once the permanent repair becomes available, however, the car must be grounded until the repair is made.

ACRA worked collaboratively with consumer advocates to develop the provisions that are part of H.R. 2198. The bill fairly balances the public's interest in safety with the rental car industry's business model. The provisions of the bill are well-reasoned, effective and workable, given the realities of the auto rental marketplace. Moreover, in these aspects the legislation embodies the safety practices that have been adopted and followed by ACRA members for many years. Our organization strongly supports the legislation and encourages Congress to enact it this year.

Properly maintained vehicles in the rental industry are paramount. It's about trust – between customers and the individual businesses of ACRA members. Customers should have confidence that their rental is not the subject of a safety recall and the legislation provides that confidence. It is common sense that the laws require that which ACRA already recommends -- that rental cars subject to safety recalls be repaired before they are put into the hands of consumers.

Important Safety Provisions of H.R. 2198

- **Timing of Notice and Grounding**

H.R. 2198 defines the timeframe in which rental companies have to take a vehicle out of service (i.e., "ground" or "lock down" the vehicle) after receiving the safety recall notice. There is a period of time the companies need in order to receive the notice and successfully lock down the appropriate vehicles. The bill calls for the vehicles to be grounded as soon as practicable, or within 24 hours of receiving the safety recall notice. In the situation of a particularly large recall

– one that affects more than 5,000 vehicles for one company, the lock down timeframe is 48 hours.

- Interim Remedy

The only exception under H.R. 2198 to the grounding or “do not rent,” requirement is when the manufacturer has issued a safety recall and has not developed the permanent repair, but offers a temporary fix – or interim remedy – that eliminates the safety risk. If the rental car company performs the interim remedy, then the car may continue to be rented. Once the permanent repair is offered by the manufacturer, the vehicle must be pulled from service and permanently repaired before being re-rented.

- Car Sales From Rental Fleets

The American car rental industry is the largest single purchaser of cars from domestic and foreign car manufacturers every year. The industry, in turn, sells a large number of cars each year through retail and wholesale channels. H.R. 2198 requires that rental car companies repair any safety recall to any vehicle prior to selling that vehicle – either through retail or wholesale markets. The only exception to this requirement is if a vehicle has been so severely damaged that it will only be sold for parts. In this instance, the rental company does not need to perform the recall work.

Federal versus State Role

This is a critical national issue and deserves a national solution. The motor vehicle safety recall process is overseen by the National Highway Traffic and Safety Administration (NHTSA) and has its origins in the Federal Motor Vehicle Safety Act, originally enacted in 1966. Therefore, ACRA believes strongly that major changes to rental vehicle safety recall procedures should be made by Congress, rather than individual states. Rental cars are an integral part of interstate commerce and car rental customers cross state borders in rental vehicles that are rented in one state, driven and then returned in another state.

As attention to vehicle safety recalls remains squarely in the public spotlight, policy makers at the local, state and federal level are understandably eager to address safety concerns. There have been several initiatives at various levels of government to particularly address safety recalls concerning the rental industry. No two proposals are the same. ACRA believe a patchwork of state and local laws would be disruptive to consumers and the car rental industry since rental cars regularly are rented in one state and driven and left in another. In addition, these state and local proposals create challenges because each attempts to address a regulatory process that is controlled and overseen by a federal agency (NHTSA). ACRA’s conviction is that rental car safety should be addressed on the federal level.

Organizations Supporting H.R. 2198

ACRA is not alone in its support for H.R. 2198. This legislation is also supported by the following companies and organizations:

- Consumers for Auto Reliability and Safety (CARS)
- Advocates for Highway and Auto Safety; Center for Auto Safety
- Consumers Union
- Consumer Federation of America; Consumer Action
- National Association of Consumer Advocates
- Trauma Foundation
- American Automobile Association (AAA)
- Truck Renting and Leasing Association
- State Farm

Conclusion

As strong supporters of H.R. 2198, we continue to talk to members of Congress and their staff in support of this legislation and are often asked why the car rental industry is willing to accept new federal regulation of the industry's practices. The response to that is easy. After listening to customers, ACRA engaged and became part of the process. The end result is a proposal that will provide car rental customers additional assurance that the vehicles they rent are safe and provides the car rental industry with a critical and clear uniform federal standard across the country.

Again, ACRA urges Congress to enact this bill as soon as possible. As this Subcommittee works on legislation regarding all aspects of auto-safety, we respectfully request that H.R. 2198 be included in the safety title this Subcommittee will develop for the House highway bill.

Thank you for providing ACRA with the opportunity to submit this statement.

AAMVA position statement on the National VIN Database:

Improving vehicle safety through more stringent recall requirements is an important national priority, but the National VIN Database Act does not constitute an effective approach. The bill imposes an unfunded mandate on states, duplicates existing processes, and transfers obligation of recall notification away from vehicle manufacturers and onto state and federal governments.

This bill haphazardly creates a costly and redundant federal system, duplicating state reporting requirements and ignoring the potential to leverage existing solutions. States would be mandated, with each of the millions of vehicle registration transactions conducted on a daily basis, to push vehicle registration data to an unfunded and unestablished national system. Furthermore, the bill has the potential to disrupt existing state system architecture or state business practices dependent on the integration of the process.

Congress can lead the way on improving the rate of safety recall repairs by holding manufacturers accountable for the quality of their products, not by penalizing state government agencies and vehicle owners with this unfunded federal mandate. As written, AAMVA opposes this legislation. AAMVA welcomes the opportunity to be involved in this discussion moving forward - including the best way to leverage existing systems that are already integrated into DMV business processes and eliminating redundant reporting requirements.



Experian
900 17th Street NW, Suite 1050
Washington, DC 20006
202 882 4610 T
www.experian.com

September 25, 2015

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, DC 20515

The Honorable Michael Burgess
Chairman
Commerce, Manufacturing and Trade Subcommittee
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Jan Schakowsky
Ranking Member
Commerce, Manufacturing and Trade Subcommittee
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, DC 20515

Dear Representatives Upton, Pallone, Burgess and Schakowsky:

On behalf of Experian and our more than 6,000 US employees, I am writing about the establishment of a national database of vehicle identification numbers (VINs) as proposed in the discussion draft of the Improving Recall Tracking Act.

Experian Automotive provides information services to the automobile industry so that manufacturers, dealers, lenders, auctions, and consumers can understand the market, the vehicles and the people who buy them. Our North American Vehicle DatabaseSM houses data on more than 700 million vehicles. Experian Automotive's AutoCheck[®] vehicle history reports provide dealers and consumers with in-depth information, allowing them to confidently understand, compare and select the right vehicles. Experian Automotive also provides to manufacturers the tools to manage a recall. For this last reason, we would like to comment on this legislation.

Private companies have already developed an effective recall tracking system that identifies the most current registered owner of a vehicle and a best address. This bill would require the federal government to expend resources to develop a public sector database that already exists in the private sector and relies on private funds. Moreover, we suspect that the government would find it challenging to incorporate the sophisticated analytics, thousands of additional data sources, and innovations that private businesses are already motivated to include. Instead, policymakers should try to understand why a significant minority of car owners do not respond to safety recall notices by taking their vehicles for service. The public policy response should focus on those issues.

Private sector companies are already providing effective services

While we share your view that more can be done to improve the motor vehicle safety recall completion rates, Congress does not need to pass legislation creating a government database when there are already private sector companies providing this information to auto manufacturers.

Experian Letter re: Discussion Draft of the Improving Recall Tracking Act
September 25, 2015
Page 2

Experian Automotive incorporates motor vehicle records and other data into several services that provide consumers, businesses, and state and national law enforcement agencies with important information about vehicle histories and registrations. Experian Automotive's North American Vehicle Database, along with Experian's credit, consumer and business information assets, helps meet the industry's growing demand for an integrated information source.

As proposed in the draft legislation, the public database would only include state motor vehicle information (i.e. make, model and year of manufacturer; name and address of person to whom the car is registered). This information and more are already included in databases maintained by businesses like Experian Automotive. For example, our North American Vehicle Database contains title and registration data - including vehicle identification number, title and transfer, registration and renewal, vehicle specifications, brand, and name and address - from a variety of public sources including the 50 states, the District of Columbia, Puerto Rico and Canada.

The federal government does not have the same resources or incentives to develop innovative recall notification systems

Private sector companies like Experian Automotive bring considerable experience and proprietary data that the public sector would be left without should it be required to develop a national safety recall database. For example, Experian Automotive does not rely solely on state motor vehicle records, which may be incomplete or outdated, when assisting auto manufacturers with a safety recall. Instead, we are able to integrate proprietary data, as well as other public record information beyond motor vehicle records, to complement the state motor vehicle data that we receive. We also clean up incorrect information to ensure that the data is accurate and that the right consumers receive the correct safety recall notice in a timely and effective manner.

In fact, federal law already requires states to provide vehicle registration information for safety recalls. Specifically, the Driver's Privacy Protection Act mandates that state departments of motor vehicles (DMVs) *shall* provide vehicle registration information for recall purposes. In the area of safety recalls, the law compels states to provide registration information, so the legal mechanism exists to identify the vast majority of car owners.

Identifying the current owners of vehicles subject to recall can be challenging because each state maintains vehicle registrations subject to their respective state laws. Furthermore, the information technology systems vary widely state by state according to their respective needs. This heterogeneity makes it difficult to compile this information into a single nationwide database, and the private sector has and continues to innovate to find ways to overcome these obstacles at no cost to the federal government.

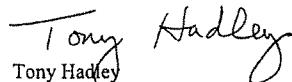
Efforts should focus on understanding why consumers do not respond to recalls

Because of work done by companies like Experian Automotive, automobile manufacturers are able to identify and locate vehicle owners with a high rate of accuracy when they need to conduct safety recalls. Therefore the question is not so much about locating the owner but rather understanding why the owners who receive the notices do not take their vehicles to have the safety defect repaired. As we all know, it can sometimes be difficult to make time to take your car to a dealership and have maintenance done to the vehicle, especially if the recall notice does not appear to be an urgent problem that prevents the vehicle from functioning properly. Policymakers should also work with the National Highway Traffic Safety Administration and other stakeholders to refine incentives for consumers to respond to safety recalls in a timely fashion.

Experian Letter re: Discussion Draft of the Improving Recall Tracking Act
September 25, 2015
Page 3

Experian looks forward to working with the Committee as it continues to consider this important issue.
Please do not hesitate to reach out to me if you or your staff has any further questions.

Respectfully,

A handwritten signature in black ink that reads "Tony Hadley". The signature is written in a cursive, flowing style.

Tony Hadley
Senior Vice President
Government Affairs and Public Policy

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641

October 13, 2015

Mr. John Bozzella
President and CEO
Association of Global Automakers
1050 K Street, N.W., Suite 650
Washington, DC 20001

Dear Mr. Bozzella,

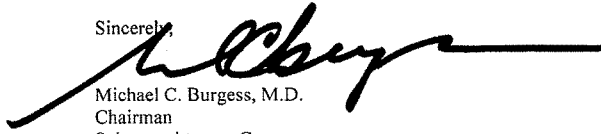
Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Friday, September 25, 2015, to testify at the hearing entitled "Legislative Hearing on VIN Database and Auto Whistleblower Bills."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Monday, October 19, 2015. Your responses should be e-mailed to the Legislative Clerk in Word format at Dylan.Vorbach@mail.house.gov and mailed to Dylan Vorbach, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Michael C. Burgess, M.D.
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment



October 19, 2015

John Bozzella, Global Automakers President and CEO, Responses to Additional Questions for the Record submitted after the House Energy and Commerce Subcommittee on Commerce, Manufacturing and Trade September 25, 2015 Hearing entitled "Legislative Hearing on VIN Database and Auto Whistleblower Bills"

From the Honorable Gregg Harper

1. If or when an employee reports information about a possible safety violation, what processes do automakers have in place to take action on that information or investigate the claim made by the employee?

While all automakers share the goal of creating a safe environment that encourages employees to report safety concerns, each has its own procedures, tailored to its workforce and organization. Many companies process employee claims by way of an internal "hot line" (in some case run by a third party), and the report is then referred to the appropriate personnel for investigation. In some companies, the report will be referred directly to a dedicated Safety Officer who will then oversee the investigation of the matter, ensure that any necessary corrective action is taken, and communicate the status back to the original employee.

2. How do automakers determine the merit of the information provided by a whistleblower and whether senior officials within the company need to be notified?

Again, the process for determining the merits of a safety claim brought by an employee varies across the companies. Many companies have a procedure for referring the report to the internal personnel with the requisite technical expertise concerning the matter and the authority to take further action, if necessary, to inform senior officials within the company.

- A. What additional guidance or direction is given to the employee who made the disclosure about how their complaint will be addressed?

Each manufacturer is committed to ensuring that employees who report safety issues are protected. Procedures vary by company. Many manufacturers train their employees specifically on product defect and safety issues, and that training may include the procedure for reporting any potential safety defect to management, and for following up on that report.

- B. Are whistleblowers notified and kept informed of when their complaint has been addressed and resolved?

Typically, the employee who made the safety report will be kept informed concerning the investigation of the report, as well as how the issue was resolved; however, the procedure for doing so will vary by company.

From the Honorable Jan Schakowsky

1. The Vehicle Safety Improvement Act would prohibit dealers from selling or leasing a used car that is subject to a recall if the vehicle has not been repaired. Does your association support a law that prohibits used car companies from selling or leasing a car unless all known recalls and defects have been repaired?

Global Automakers believes that all motor vehicles with open recalls should be repaired, regardless of where they are in the stream of commerce. We therefore believe that, at a minimum, purchasers of used vehicles should be informed of their recall status. This is why we favor the comprehensive and ongoing approach of informing consumers of the recall status of their vehicles through the state DMV registration and reregistration process. This process by definition captures every vehicle regardless of where it is sold and how often it is sold.

2. According to the Department of Transportation, average recall completion rates are currently close to 80%. That rate should be 100, and we should explore every avenue that could allow us to reach those missing consumers. However, 80% is rather high, and we all know someone who has said that he or she has received a notice but has yet to deal with it. I am concerned that the VIN database described in this draft will not affect recall completion rates. Am I correct that the data in this new database is the same dataset used currently—that is, data from state DMVs—to provide addresses?

Yes, it is our understanding that data for the VIN database described in the draft bill is the same DMV-originated data currently purchased by most automakers through third parties. It is possible that the database created by the bill could reflect more current information depending on how often the database is updated. While we agree that the VIN database may not fully resolve the problem of recall completion rates, we do believe that getting the state DMVs involved will increase completion rates if the registration process is used to notify or even mandate recall repairs prior to registration or renewal.

From the Honorable G. K. Butterfield

1. Mr. Bozzella, in your testimony submitted to the Commerce, Manufacturing, and Trade Subcommittee, you stated, "... Global Automakers supports efforts to dramatically improve recall completion rates, so that no one is left driving an unrepaired vehicle." The rental car industry, consumer organizations, General Motors, and Honda, which is a member of your association, are supportive of H.R. 2198, the Raechel and Jacqueline Houck Safe Rental Car Act, which would mandate rental car companies fix recalled vehicles in their fleets before renting or selling them.
 - a. In light of your Association's support for improving recall completion rates and ensuring consumers are not left driving unrepaired vehicles; does the Association of Global Automakers support H.R. 2198?

Global Automakers believes that every motor vehicle with an open recall should be repaired. We believe that any customer of a vehicle at any point in the stream of commerce should be informed of the recall status of their vehicle – new, used, or rented. This is why we favor the comprehensive and ongoing approach of informing consumers of the recall status of their vehicles through the state DMV registration and reregistration process.

- b. If the Association of Global Automakers does not support the legislation, please explain why.

Please see the answer provided above.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
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October 13, 2015

Mr. Joe LaFeir
Senior Vice President
IHS Automotive IS&S
26533 Evergreen Road
Southfield, MI 48076

Dear Mr. LaFier,

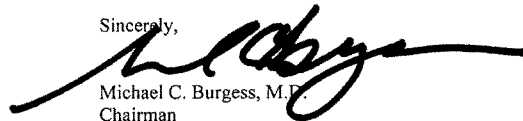
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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Michael C. Burgess, M.D.
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

The Honorable Adam Kinzinger

- A. Does your company currently receive Original Equipment (OE) part numbers, part descriptions and other identifying data as coded in the last six digits of the VIN from all automakers?

Answer: No.

- B. The automotive parts supply chain includes over 500,000 parts that are removed and recycled from vehicles every day. Do your company's databases have the ability to identify these recycled parts, especially if they are subject to a recall, and note their remedy status?

Answer: No, IHS Automotive databases do not contain recycled parts data. Currently IHS Automotive databases have the capability to identify vehicles that have been junked, salvaged, or dismantled and then rebuilt or reconstructed using the Branded Title data provided by the states. This data does not specify the part in question, however, and does not include all vehicles that have been junked, salvaged, or dismantled.

- C. If so, can IHS incorporate this parts data into an automated system for industry stakeholders so they are also able to track parts that are defective? If not, should Secretary Foxx's recommendation be implemented, could IHS then incorporate the data into an automated system for stakeholders?

Answer: If OE part information were to be provided at a unique VIN level, this information could be linked to the IHS database and used to support tracking and reporting to the industry. In cooperation with the OEMs, IHS Automotive could modify the existing recall process to provide the VINs, part numbers, and VIN completion status to the salvage yards so that these parts can be identified and handled as appropriate to ensure a recalled part is not available for purchase.

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
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2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (202) 225-2927
Minority (202) 225-3641
October 14, 2015

Mr. Cleveland Lawrence III
Co-Director
Taxpayers Against Fraud
1220 19th Street, N.W., Suite 501
Washington, DC 20036

Dear Mr. Lawrence,

Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Friday, September 25, 2015, to testify at the hearing entitled "Legislative Hearing on VIN Database and Auto Whistleblower Bills."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Tuesday, October 20, 2015. Your responses should be e-mailed to the Legislative Clerk in Word format at Dylan.Vorbach@mail.house.gov and mailed to Dylan Vorbach, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Michael C. Burgess, M.D.
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

Responses of Cleveland Lawrence III
Co-Director of Taxpayers Against Fraud

The Honorable Jan Schakowsky

1. I am concerned about doing as much as we can to protect people who put their livelihoods in jeopardy to speak out about public safety risks. And I was a proponent of the anti-retaliatory language included in MAP-21 when it passes three years ago. This whistleblower bill is directed at incentivizing whistleblowers. But in two separate places in the text, it requires that potential whistleblowers first approach someone at their company and report the defect internally. In most cases, whether they do so or not could affect whether they qualify for an award under this bill, as well as the amount of the award if they do qualify.
 - a. What effect should we expect these internal reporting requirements to have on potential whistleblowers?

The internal reporting requirements will absolutely undermine the bill's goal of incentivizing whistleblowers to come forward and report public safety risks within the automobile industry. It cannot be disputed that quality internal compliance programs exist and can work very well to assist ethical companies that want to play by the rules. In my experience, the vast majority of employee-whistleblowers want their companies to correct misconduct without government intervention; these individuals do not necessarily want to go through the process of publicly blowing the whistle on their employers, which not only carries the risk of termination, demotion or other forms of retaliation, but also brings the stresses of being ostracized by their fellow employees and the potential of being blacklisted within their chosen field once they have been identified as a "troublemaker" within the industry. Employees are often forced to look for assistance outside their companies when they recognize that reporting misconduct internally will not result in change.

The bill fails to recognize that not all internal compliance programs are the same, and that lying, cheating and stealing has become a business model for many companies. Within some corporate environments, compliance officers are actually nothing more than "compliant" officers, who are fully aware of their respective companies' misconduct – which is often directed from management. In such companies, blowing the whistle through the internal compliance program will do nothing more than place a target on the employee. Moreover, once employers identify the potential whistleblowers within their companies, they generally cut off those employees' access to additional information regarding the misconduct – often by simply firing the employees. Just as these companies see paying fines and compensating victims as a "cost of doing business," so too do they see any potential exposure from employee retaliation claims. In these situations, the effect on the companies' bottom line may be minimal (and will often be passed along to stockholders anyway), but the effect on the employees may be far worse, as it may involve protracted litigation and immediate searches for new employment. To make

matters worse, these individuals will no longer be able to gather information that could assist the government in quickly resolving misconduct – and preventing public safety crises.

We should trust employees to understand the culture within their respective organizations, and we should allow employees the freedom to determine whether reporting misconduct up the corporate chain of command or directly to government officials will result in a faster, better resolution of the problems they've identified. By requiring employees to report internally before contacting appropriate government officials, the bill will likely dis-incentivize whistleblowers from coming forward.

- b. Are the exceptions to the internal reporting requirement in the bill enough to provide cover for people who feel morally obligated to speak out but are concerned about retaliation from their employer?

The bill wisely recognizes that employees who report their employers' misconduct face the risk of retaliation. Consequently, the bill includes four exceptions to its internal reporting requirement – each of which generally arises when the employee reasonably believes that the company already knows about the misconduct.

As an initial matter, the bill is silent with respect to whom within the company must be aware of the misconduct for any of the exceptions to apply; certainly in every instance the employee-whistleblower will be aware of the misconduct, but the bill does not address whether the employee's knowledge (regardless of his/her position within the company) will be sufficient to place the company on notice for the purposes of triggering any of the exceptions. As a result, the bill needlessly introduces confusion into a process that should be as straightforward as possible for employees who must weigh a variety of factors before deciding whether or not to participate in a corporate internal compliance program and/or a government whistleblower program. In addition, since the exceptions are based on whether the employee's belief was "reasonable," any employee who might choose to forgo the corporate internal compliance program will still be left to wonder whether or not the Secretary of Transportation – in his/her unfettered discretion – will ultimately agree that the employee's decision was reasonable or will instead decide to withhold an award from the employee entirely.

The uncertainty associated with many of the bill's most important provisions does not provide the comfort and security that employees require before they will decide to risk their livelihoods to expose misconduct within their companies. Thus, the exceptions to the internal reporting requirement are insufficient to incentivize employees from coming forward.

- c. The whistleblower bill calls on the Secretary of Transportation and the rest of DOT to avoid revealing the identity of whistleblowers. But how does the internal reporting

requirement affect confidentiality and the effort to protect the identity of whistleblowers once they decide to report their employer?

Again, the bill prudently identifies a significant issue faced by whistleblowers – namely, a desire for anonymity – but the bill fails properly to address that issue. The bill outlines several measures the Government will undertake to maintain the confidentiality of its whistleblowers, but the bill’s internal reporting requirement undercuts those measures because it fails to protect whistleblowers’ identities from their employers – about whom whistleblowers are primarily concerned, due to fears of reprisal and blacklisting. As a result, the bill fails to serve one of whistleblowers’ most important needs, which will result in fewer whistleblowers coming forward.

2. This whistleblower bill gives the Secretary of Transportation broad discretion in determining awards to whistleblowers. Other whistleblower bounty provisions, like Dodd Frank for example, give the government discretion as to the amount, but require that some award be given as long as certain conditions are met. In comparison, this bill would give the Secretary of Transportation complete discretion in whether to give an award at all, and merely prescribes criteria for the Secretary to consider. How will broad discretion for the Secretary in determining awards affect the likelihood that whistleblowers come forward?

The bill’s most problematic provision grants the Secretary of Transportation unfettered discretion to determine awards under the whistleblower program – including no award at all. Thus, employees who do everything the bill requires, by risking retaliation and reporting misconduct through the company’s internal compliance program; later reporting the problems to the government after the company refuses to correct them; and eventually succeeding in exposing public safety concerns that result in significant monetary sanctions against the company, might still be denied awards through no fault of their own. This framework does not provide a real incentive for coming forward; instead, it offers an illusory promise. Furthermore, although the bill grants whistleblowers the right to appeal the Secretary’s decisions, that provision is also ineffectual, since it recognizes the Secretary’s unlimited power in this regard, and thereby offers whistleblowers no real basis on which to appeal. Once again, the bill inserts uncertainties into the process, which only discourages employees from blowing the whistle.

Every successful whistleblower program I am aware of – including the federal and state False Claims Act laws; the IRS whistleblower program; the SEC whistleblower program; and the CFTC whistleblower program – guarantees minimum awards to successful whistleblowers who follow the program’s rules. Unfortunately, the bill does not, and therefore, it simply cannot succeed. Rather than grant the Secretary unfettered discretion, the bill should follow the lead of these other whistleblower programs, and authorize financial awards within a predetermined range that guarantees whistleblowers a minimum percentage of the government’s recovery. Only then will whistleblowers have a real incentive to expose misconduct under the program.

3. Overall, will this bill incentivize whistleblowers?

This bill will not incentivize employees to become whistleblowers, as it injects unnecessary complications and ambiguities into the process. In fact, the bill will likely discourage whistleblowing, which can only make the automobile industry less safe for all of us.

Thank for you allowing me to testify before the Committee on this important matter. Should you have any additional questions, I would be happy to answer them.

Best regards,

/s/ Cleveland Lawrence III

Cleveland Lawrence III

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
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2125 RAYBURN HOUSE OFFICE BUILDING
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Minority (202) 225-3641
October 14, 2015

Mr. William Wallace
Policy Analyst
Consumers Union
1101 17th Street, N.W.
Washington, DC 20036

Dear Mr. Wallace,

Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Friday, September 25, 2015, to testify at the hearing entitled "Legislative Hearing on VIN Database and Auto Whistleblower Bills."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Tuesday, October 20, 2015. Your responses should be e-mailed to the Legislative Clerk in Word format at Dylan.Vorbach@mail.house.gov and mailed to Dylan Vorbach, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Michael C. Burgess, M.D.
Chairman
Subcommittee on Commerce,
Manufacturing, and Trade

cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

Attachment

Additional Questions for the Record
 Answered by William C. Wallace, Policy Analyst
 Consumers Union, the policy and advocacy arm of Consumer Reports
 For the Subcommittee on Commerce, Manufacturing, and Trade
 “Legislative Hearing on VIN Database and Auto Whistleblower Bills”
 September 25, 2015

The Honorable Jan Schakowsky

1. **Volkswagen deliberately built into their diesel cars a defeat device to cheat emissions testing. Both the VIN database and whistleblower bills are drafted to deal only with safety defects and noncompliance in vehicles, they do not reach vehicle emissions. While I have other concerns with these bills, if they move forward, we should consider whether to expand them to address emissions problems.**

- a. **If a VIN database bill were to move forward, would you support a provision permitting the use of information received from the database for purposes of emissions related recalls?**

As mentioned in the testimony delivered before the Subcommittee on September 25, 2015, Consumers Union has concerns with the VIN database bill. For instance, we are concerned that the database would stretch NHTSA’s already-limited resources. With adequate funding, a VIN database could provide consumer benefits, and we would support a provision permitting the use of information received from the database for purposes of emissions-related recalls.

- b. **If a whistleblower bill were to move forward, would you support including reporting of noncompliance with EPA emissions standards and fuel economy requirements?**

As mentioned at the Subcommittee hearing on September 25, 2015, Consumers Union is concerned that the bill does not adequately incentivize someone to come forward, risking their career, to warn of a safety problem. If this issue were addressed, and proper agency roles recognized, we would support a provision allowing a whistleblower reporting noncompliance with EPA emissions standards or fuel economy requirements to be eligible for an award.

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Majority (2021 225-2927)
Minority (2021 225-3641)

October 13, 2015

Mr. Shane Karr
Vice President, Federal Affairs
Alliance of Automobile Manufacturers
803 7th Street, N.W.
Mountain View, CA 94043

Dear Mr. Karr,

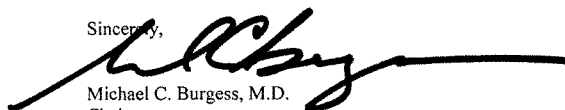
Thank you for appearing before the Subcommittee on Commerce, Manufacturing, and Trade on Friday, September 25, 2015, to testify at the hearing entitled "Legislative Hearing on VIN Database and Auto Whistleblower Bills."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Monday, October 19, 2015. Your responses should be e-mailed to the Legislative Clerk in Word format at Dylan.Vorbach@mail.house.gov and mailed to Dylan Vorbach, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Michael C. Burgess, M.D.
Chairman
Subcommittee on Commerce,
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cc: Jan Schakowsky, Ranking Member, Subcommittee on Commerce, Manufacturing, and Trade

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QUESTIONS FOR THE RECORD

HOUSE COMMITTEE ON ENERGY AND COMMERCE SUBCOMMITTEE ON COMMERCE
MANUFACTURING AND TRADE

HEARING ON "VIN DATABASE AND AUTO WHISTLEBLOWER BILLS"
HELD SEPTEMBER 25, 2015

The Honorable Gregg Harper

1. If or when an employee reports information about a possible safety violation, what processes do automakers have in place to take action on that information or investigate the claim made by the employee?

Alliance member companies encourage their employees to report safety concerns as soon as possible. Each company has specific policies and procedures in place to ensure that safety concerns are reported and addressed. Examples of such policies and procedures include: Corporate Integrity Codes which requires employees to conduct business activities in full compliance with applicable law; internal hotlines for employees to anonymously report instances of suspected wrongdoing or misconduct; and regular training for company personnel on Safety Act obligations and company best practices.

2. How do automakers determine the merit of the information provided by a whistleblower and whether senior officials within the company need to be notified?

The Alliance does not have information related to the specific, internal business practices of its members.

- a. What additional guidance or direction is given to the employee who made the disclosure about how their complaint will be addressed?

Please see answer above

- b. Are whistleblowers notified and kept informed of when their complaint has been addressed and resolved?

Please see answer above

The Honorable Jan Schakowsky

1. The Vehicle Safety Improvement Act would prohibit dealers from selling or leasing a used car that is subject to a recall if the vehicle has not been repaired. Does your association support a law that prohibits used car companies from selling or leasing a car unless all known recalls and defects have been repaired?

Used car dealers constantly buy and sell vehicles of different makes. Because of this they do not always have access to the proper parts to remedy every vehicle on their lot. There are also

times when dealerships are either great distances apart or parts are not immediately available in that area. Via a notification regime, consumers are informed of the recall and may purchase a vehicle and have it remedied at their own convenience. The Alliance of Automobile Manufacturers supports the concept of allowing for consumer notification when selling used vehicles.

2. According to the Department of Transportation, average recall completion rates are currently close to 80%. That rate should be 100, and we should explore every avenue that could allow us to reach those missing consumers. However, 80% is rather high, and we all know someone who has said that he or she has received a notice but have yet to deal with it. I am concerned that the VIN database described in this draft will not affect recall completion rates. Am I correct that the data in this new database is the same dataset used currently – that is, data from state DMVs – to provide addresses?

The Alliance of Automobile Manufacturers agrees that all vehicles subject to a recall should be repaired. In fact, we have initiated a first of its kind recall survey to determine the factors that cause motorists to repair and not repair their recalled vehicles. We released our initial findings earlier this month but continue to gather additional information in hopes of achieving a 100% completion rate. It is true that one of the ways auto companies locate affected vehicle owners is via registrations at the DMV. However, this information is not always accurate. Owners often sell their vehicles or people move and do not update their information for months on end. Creating a national VIN database from all DMVs across the country would ensure a more accurate and reliable system that auto companies could access at a much faster rate.

The Honorable G.K. Butterfield

Mr. Karr, at the hearing, you said the Alliance of Automobile Manufacturers does not support H.R. 2198, the Raechel and Jacqueline Houck Safe Rental Car Act “as introduced.” As you know, the rental car industry, which would be regulated under H.R. 2198, is in full support of the legislation and, in fact, most of the members of the rental car industry are already voluntarily complying with the terms of the legislation. In addition, General Motors, one of your association’s largest members, also supports the legislation. Without enactment of this critical legislation, rental car companies would be permitted to continue renting unrepaired recalled vehicles with life threatening defects such as those that were responsible for the tragic deaths of Raechel and Jackie Houck.

1. Can you please explain why the Alliance of Automobile Manufacturers does not support H.R. 2198?

The Alliance of Automobile Manufacturers believes that all customers, including rental car companies, should be able to have their recalled vehicles repaired in a timely manner and that all customers should be treated equally whether they are driving their own vehicle or one they rented. However, the legislation as drafted differentiates between customers by creating classes of those that are allowed to drive their vehicles under a recall and those that are not. It would also incentivize prioritizing recall repairs on rental fleets ahead of individual owners in order to avoid economic harm thus pushing consumers to the back of the line when waiting to

remedy their vehicles. Additionally, the legislation would alter the current status quo relationship between rental companies and manufacturers by creating "loss of use" damages for rental car companies. Loss of use damages are considered so anti-consumer, that rental companies are banned in many states from pursuing them directly against consumers. Finally, loss of use damages will increase costs, which will ultimately be passed on to consumers via increased rental prices. The increased costs might be acceptable if they resulted in more safety benefits, but at this point no one, including NHTSA, has been able to point to any actual safety benefits from passing this bill.